A Comparative Analysis of Hedging in a Corpus of Two Written Legal Discourse Genres

TESIS DOCTORAL

Holly Vass Ward
Licenciada en Filología Hispánica

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Resumen

Esta tesis doctoral, que es la culminación de mis estudios de doctorado impartidos por el Departamento de Lingüística Aplicada a la Ciencia y a la Tecnología de la Universidad Politécnica de Madrid, aborda el análisis del uso de la matización (hedging) en el lenguaje legal inglés siguiendo los postulados y principios de la análisis crítica de género (Bhatia, 2004) y empleando las herramientas de análisis de córpora WordSmith Tools versión 6 (Scott, 2014). Como refleja el título, el estudio se centra en la descripción y en el análisis contrastivo de las variedades léxico-sintácticas de los matizadores del discurso (hedges) y las estrategias discursivas que con ellos se llevan a cabo, además de las funciones que éstas desempeñan en un corpus de sentencias del Tribunal Supremo de EE. UU., y de artículos jurídicos de investigación americanos, relacionando, en la medida posible, éstas con los rasgos determinantes de los dos géneros, desde una perspectiva socio-cognitiva. El elemento innovador que ofrece es que, a pesar de los numerosos estudios que se han podido realizar sobre los matizadores del discurso en el inglés general (Lakoff, 1973; Hübler, 1983; Clemen, 1997; Markkanen and Schröder, 1997; Mauranen, 1997; Fetzer 2010; y Finnegan, 2010 entre otros) académico (Crompton, 1997; Meyer, 1997; Skelton, 1997; Martín Butragueño, 2003) científico (Hyland, 1996a, 1996c, 1998c, 2007; Grabe and Kaplan, 1997; Salager-Meyer, 1997 Varttala, 2001) médico (Prince, 1982; Salager-Meyer, 1994; Skelton, 1997), y, en menor medida el inglés legal (Toska, 2012), no
existe ningún tipo de investigación que vincule los distintos usos de la matización a las características genéricas de las comunicaciones profesionales. Dentro del lenguaje legal, la matización confirma su dependencia tanto de las expectativas a macro-nivel de la comunidad de discurso, como de las intenciones a micro-nivel del escritor de la comunicación, variando en función de los propósitos comunicativos del género ya sean éstos educativos, pedagógicos, interpersonales u operativos. El estudio pone de relieve el uso predominante de los verbos modales epistémicos y de los verbos léxicos como matizadores del discurso, estos últimos divididos en cuatro tipos (Hyland 1998c; Palmer 1986, 1990, 2001) especulativos, citativos, deductivos y sensoriales. La realización léxico-sintáctica del matizador puede señalar una de cuatro estrategias discursivas particulares (Namsaraev, 1997; Salager-Meyer, 1994), la indeterminación, la despersonalización, la subjectivisación, o la matización camuflada (camouflage hedging), cuya incidencia y función varía según género. La identificación y cuantificación de los distintos matizadores y estrategias empleados en los diferentes géneros del discurso legal puede tener implicaciones pedagógicas para los estudiantes de derecho no nativos que tienen que demostrar una competencia adecuada en su uso y procesamiento.
This doctoral thesis, which represents the culmination of my doctoral studies undertaken in the Department of Linguistics Applied to Science and Technology of the Universidad Politécnica de Madrid, focusses on the analysis of hedging in legal English following the principles of Critical Genre Analysis (Bhatia, 2004), and using WordSmith Tools version 6 (Scott, 2014) corpus analysis tools. As the title suggests, this study centers on the description and contrastive analysis of lexico-grammatical realizations of hedges and the discourse strategies which they can indicate, as well as the functions they can carry out, in a corpus of U.S. Supreme Court opinions and American law review articles. The study relates realization, incidence and function of hedging to the predominant generic characteristics of the two genres from a socio-cognitive perspective. While there have been numerous studies on hedging in general English (Lakoff, 1973; Hübler, 1983; Clemen, 1997; Markkanen and Schröder, 1997; Mauranen, 1997; Fetzer 2010; and Finnegan, 2010 among others) academic English (Crompton, 1997; Meyer, 1997; Skelton, 1997; Martín Butragueño, 2003) scientific English (Hyland, 1996a, 1996c, 1998c, 2007; Grabe and Kaplan, 1997; Salager-Meyer, 1997 Varttala, 2001) medical English (Prince, 1982; Salager-Meyer, 1994; Skelton, 1997), and, to a lesser degree, legal English (Toska, 2012), this study is innovative in that it links the different realizations and functions of hedging to the generic characteristics of a particular professional communication. Within legal English, hedging has
been found to depend on not only the macro-level expectations of the discourse community for a specific genre, but also on the micro-level intentions of the author of a communication, varying according to the educational, pedagogical, interpersonal or operative purposes the genre may have. The study highlights the predominance of epistemic modal verbs and lexical verbs as hedges, dividing the latter into four types (Hyland, 1998c; Palmer, 1986, 1990, 2001): speculative, quotative, deductive and sensorial. Lexical-grammatical realizations of hedges can signal one of four discourse strategies (Namsaraev, 1997; Salager-Meyer, 1994), indetermination, depersonalization, subjectivization and camouflage hedging, as well as fulfill a variety of functions. The identification and quantification of the different hedges and hedging strategies and functions in the two genres may have pedagogical implications for non-native law students who must demonstrate adequate competence in the production and interpretation of hedged discourse.
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INTRODUCTION

EALP (English for Academic Legal Purposes) is a growing sub-specialty of EAP (English for Academic Purposes) which focuses on reading, writing, listening and speaking within a legal academic context. EALP can be aimed at both undergraduates and post-graduates studying a law degree in their own country as well as those who are preparing to undertake, or are undertaking, a post-graduate degree course in Law at a university in a country where English is the medium of communication, for example Great Britain, or the United States. In the case of the former, EALP may serve as a basis for content-based language instruction, and in the case of the latter EALP may supplement language knowledge, especially aiding weaker students to overcome language problems which may hinder their progress in their other classes. While the two groups are diverse and the specific objectives of EALP within each group may vary, the general objectives for each group can be summed up as follows:

1. To introduce students to the historical and conceptual basis of English law.

2. To prepare students to successfully undertake a degree course in Law in an English-speaking academic context.

3. To enable students, upon completion of their degree course, to manage successfully in an occupational context.
These objectives are especially relevant if we consider that today’s world is one in which often several different countries may dispute legal jurisdiction, international law supplants national law, and a large quantity of legal documents is drafted directly into English. As a result, it is essential that lawyers be able to do precisely what Candlin et al. (2002) argue law does not do: cross national, cultural and legal boundaries. This is particularly important for EALP students who, by definition, must adopt an international, intercultural, trans-legal approach to law.

However there are many factors which can hinder an EALP student’s progression towards becoming a global lawyer. Firstly there are significant variations in legal systems throughout the world. EALP instruction, given its basis in the English language, generally focuses on the common law system. However, many, if not most students of EALP will probably come from countries with civil or sharia law systems. In addition, there are significant variations even among common law countries, the law in England and Wales not being the exact same as the law in the United States or Hong Kong, for example.

Not only do legal systems differ from country to country, but also legal education can vary as well. For example in Great Britain, and many other countries, law is studied at undergraduate level. Aspiring lawyers study a three-year LL.B. degree (Bachelor of Laws), but must complete an additional
one or two years of study and professional shadowing before being allowed to practice. In the United States, in contrast, upon completion of a four-year B.A. degree (Bachelor of Arts) in subjects as diverse as English, History, Political Science or Environmental Science, aspiring lawyers go to a university-associated ‘law school’ for an average of three years in order to attain the J.D. or Juris Doctorate degree which would allow them to practice.

International students wishing to study law at post-graduate level in the United Kingdom or United States will have completed a basic law degree in their own country before embarking on an LL.M. (Master of Laws) degree at their chosen British or American university. The law degree from other countries will aim to teach not only a different legal system from the one used in Britain or America, but will also generally employ different methods. The hallmark of the legal educational system in common law countries, particularly the United States, is the case method which uses court decisions to derive basic principles of law. In other countries, particularly civil law countries, more emphasis is placed on learning of collections of laws such as civil and criminal codes.

In the British and American system, it is expected that a law student will learn to ‘think like a lawyer’, or use “certain techniques of reasoning…characteristic of legal decision-making” (Schauer, 2009: xi). However, these techniques could be very different from those used in other countries with other legal systems and other legal educational systems. The EALP student, then, will
have to learn new methods of logic, analysis, and critical thinking, which in turn are reflected by use of a language which will probably not be their native language.

It is easy to imagine that learning to produce and interpret often nuanced language correctly in a new legal context can be challenging for the non-native EALP student. This may be especially true in areas of language such as hedging which is used to add shades of meaning to a proposition. Personal experience as an EALP teacher has shown that while judges and legal scholars alike often turn to hedging to grade their language and influence the reader’s interpretation of their propositions, international students often find such subtleties confusing and difficult.

Competent ability to use and interpret hedges in legal writing can be "notoriously problematic" for even advanced-level non-native speakers, even though it is crucial to a system which relies so heavily on interpretation of precedents (Abbuhl, 2006:152). This can be due to several factors including lack of knowledge of items which can be used as hedges (Abbuhl, 2006), lack of understanding of both sociopragmatic (Alonso, et al., 2012; Tessuto, 2011) as well as disciplinary rules (Abbuhl, 2006), regarding the use of hedging, all compounded by a lack of targeted instructional activities that help students notice, interpret and produce hedging correctly (Hyland, 2003; Wishnoff, 2000). Nevertheless, the important interactional and social functions hedges
can perform, as well as the role they play in conveying nuances in meaning having to do with certainty and commitment, has been well established (Poos and Simpson, 2002). In the end, the inability to hedge appropriately can result in second-language speakers being perceived as impolite, arrogant or offensive, and inability to interpret hedging can result in second-language speakers failing to understand a native speaker’s meaning (Fraser, 2010).

The purpose of this study, therefore, is to contribute to the body of knowledge regarding hedging in legal discourse, particularly in two written genres which an EALP student should potentially be able to handle in order to inform their own research: The American law review article and the U.S. Supreme Court opinion. To date, hedging in legal discourse has been relatively overlooked save certain notable contributions from Bhatia et al. (2004), Tessuto (2011), Toska (2012) and Hinkle et al. (2012). While Bhatia et al. (2004) and Tessuto (2011) looked at hedging in the legal problem question answer genre, Toska (2012) studied stance conveyed by a small number of modal verbs (may, might, could) in U.K. Supreme Court judgments, and Hinkle et al. (2012) linked hedging in District Court decisions to Positive Political Theory.

The current study approaches hedging in the two selected genres from a holistic perspective, concurrently integrating textual, pragmatic, cognitive and social factors which simultaneously work together in communication. It focuses not only on lexico-grammatical realizations of hedges, but also links
these to discourse strategies aimed at fulfilling specific communicative functions working together as mutually interactive components of discourse. This study sets within Bhatia’s (2004) Critical Genre Analysis approach and makes use of corpus linguistic tools (WordSmith Tools version 6.0) to quantitatively analyze two specialized sub-corpora of American law review articles and U.S. Supreme Court opinions.

Given that the law review article is an academic genre, and Supreme Court opinions form a juridical genre, it can be postulated that there will be more hedging, in general in the former than in the latter. Nevertheless, how and why hedging is used in the two genres at all will make for a more valuable analysis. Consequently, in this study, a progressively deeper analysis of the phenomenon is offered, leading from general surface-level description of significant lexico-grammatical features which signal hedging, and the relationship of these features to meta-textual rhetorical strategies which aid in fulfilling particular functions, to a deeper analysis and explanation of differences found between the two chosen legal written discourse genres. This entails integrating genre and hedging analysis.

The main aim of this study is to compare hedging in two legal genres, particularly hedging carried out by both modal and epistemic lexical verbs. This aim gives rise to several objectives:
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- To determine the optimal size of corpus which would produce reliable results through the use of concordancing tools while still allowing for contextual analysis to determine if a particular item is being used as a true hedge

- To identify what lexico-grammatical items and rhetorical strategies are used to signal hedging in the two genres and the function these serve

- To define generic features of American law review articles and U.S. Supreme Court opinions

- To relate hedging choice, frequency and function in the two genres to their specific generic features

- To establish data which can be exploited pedagogically in the EALP classroom

The study comprises seven chapters. Chapters 1 and 2 make up the theoretical framework, discussing the concepts of genre and hedging in turn. In addition, Chapter 2 addresses the pedagogical applications of hedging research.

Chapter 3 details both the corpus chosen for this study and the methodology followed, while Chapter 4 provides the results of the quantitative analyses carried out on the corpus.
Chapter 5 and 6 analyze the results with chapter 5 focusing on modal verbs and 6 on lexical verbs. Finally, conclusions and pedagogical implications are presented in Chapter 7.
CHAPTER 1:
THE CONCEPT OF GENRE
This part comprises the first of two chapters which together form the Theoretical Framework. It aims to provide an overview of the concept of ‘genre’, while the following will address the concept of ‘hedging’.

Section 1.1 traces the development of the concept from its use in literary discourse to its appropriation by linguists and its evolutions in that field. It details three distinct approaches to genre and genre analysis which have evolved simultaneously since the 1960’s: the Sydney School approach, the ESP School approach and the New Rhetoric approach.

Section 1.2 addresses legal genres, outlining classification of legal genres in general, before describing the two genres which are the subject of this study, U.S. Supreme Court opinions and American law review articles, in detail. Finally, 1.3 will explore the relationship between genre and hedging with a view to providing a springboard for chapter 2.
1.1 Overview of genre analysis

Our understanding of language and its relationship to social contexts has evolved over the past 50 years, leading to changing perceptions about a variety of linguistic concepts, ‘genre’ being but one. This section aims to provide an overview of the historical development of genre analysis which has culminated in three main approaches: The Sydney School, The ESP School and New Rhetoric. Pedagogical implications of the three approaches will also be mentioned.

1.1.1 The origins of genre analysis

For many years, the term ‘genre’ was applied to literary discourse to highlight the fact that different types of literary texts (i.e. sonnet, tragedy) can be recognized by their overall structure. However, applied to non-literary discourse as a linguistic concept, ‘genre’ has developed over the past decades in accordance with a shift in emphasis from lexico-grammatical form to pragmatic function and cognitive interactional principles. This has coincided with a shift in focus from a single text to a specific genre and analysis of professional and social practice through the study of genres.

Early emphasis on lexico-grammatical form led Halliday et al. (1964) to set out to describe statistically significant lexico-grammatical features of a given register, or “a particular language variety, usually associated with a particular group of people or activity” (Flowerdew, 2011: 126). This ‘register analysis’
was limited to a surface-level description of syntactic properties. However, in the 1970’s, Halliday delved much deeper into the functions that certain lexicogrammatical choices could be used to carry out. In order to explain “how individuals use language and how language is structured for its different usages” (Figueiredo, 2010: 221), he developed systemic functional linguistics, ‘systemic’ because language consists of a set of choice systems providing the addressee with a variety of ways in which to present meaning, and ‘functional’ because language is used to achieve some purpose. Thus, in Halliday’s view, a speaker’s or writer’s choice of language is made with a view to carrying out certain social functions. His view of language would inspire others in the Sydney School of genre analysis which will be dealt with in more depth in section 1.1.2.

At roughly the same time, Lackstrom, Selinker and Trimble (1973) proposed grammatical-rhetorical analysis, the main objective of which was the study of the relationship between choice of lexicogrammatical feature and rhetorical function in English for Science and Technology. In particular Lackstrom, Selinker and Trimble (1973) studied two sources of difficulty for engineering students, choice of tense and article, which, they found, was used quite differently in technical writing than in general English. For example, in general English, tense choice is associated with the notion of time, but in Science and Technology, the present tense is used when the writer carries out the rhetorical function of generalizing. Similarly, in 1974, Swales found that the –
in participle in chemistry texts, as in ‘a given experiment’, had the function of either “clarifying the status of the sentence or specifying the determiner range of the noun phrase” (Bhatia, 1993: 7). With their emphasis on disciplinary discourse and ultimate pedagogical aims, Lackstrom, Selinker and Trimble (1973) and Swales (1974) paved the way for later approaches to genre analysis, most notably the ESP school which will be discussed in more detail in 1.1.3.

Thus, the seeds for two distinct linguistic approaches to genre were planted in the 1960s and 1970s, each reflecting a move away from mere surface level linguistic analysis of statistically significant lexico-grammatical features to more closely examine the relationship between function and structure. In addition, alongside the linguistic approaches to genre, a third socio-contextual approach also developed in response to a renewed interest in the study of the art of rhetoric. This would culminate in the development of New Rhetoric which will be dealt with in 1.1.4.

The three distinct approaches to genre originated at roughly the same time, and all three evolved, in part, in response to changing views on language. In the 1960’s and 1970’s, focus was placed on linking form and function in single texts. In addition, general and scientific communication was largely only considered from the point of view of the addresser, the writer or speaker. By
the late 1970’s and early 1980’s, however, linguists began to take a different approach.

Communication began to be considered from the point of view of not only the addresser, but also the addressee. Communication was seen as interactive in nature, not just a product ready-made to be consumed by the addressee, assuming that “the same interpretive procedures are brought into play whether one is involved in actual production of discourse or not” (Bhatia, 1993: 9). A general view that there is an interrelationship between language, function and interpersonal relationships was gaining acceptance.

Up to this point, linguists had been concerned with ‘registers’ or ‘text types. In 1981, two papers were published which highlighted the concept of ‘genre’, and which proved pivotal in genre analysis as it is known today. The first, by Tarone, Dwyer, Gillette and Icke (1981) situated the concept of genre within a linguistic context for the first time and linked it to rhetorical purpose. The second, Swales (1981), foregrounded the concept of genre as a discursive unit and introduced move analysis in which he suggested that different sections within the structure of a text carry out distinct rhetorical functions, which he called moves (Tardy, 2011). These papers ushered in a new era of genre analysis -- one which was explicative as well as descriptive in nature.
From that time on genre analysis began to develop in order to offer “a grounded description and explanation of language use in academic and professional contexts in an attempt to answer the question: ‘why do professionals use the language the way they do?’” (Bhatia, Flowerdew and Jones, 2008: 163). While differing in several aspects, each of the three approaches found that the answer to that question lay not only in a surface analysis of lexico-grammatical features in texts, but also in a multi-dimensional and multi-perspective analysis of both text-internal and text-external factors which influence not only text production, but also interpretation. Gradually greater importance was afforded the notion of context in the broad sense meaning that the focus broadened from the text, and surrounding texts (context), to specific academic and professional practices (context).

The remainder of this section will address each of the three approaches to genre and genre analysis, as well as their pedagogical implications, in turn.
1.1.2 The Sydney School

The Sydney School’s view of genre arises from a larger theory of language, systemic functional linguistics (SFL), developed by Halliday, who founded the linguistics department at the University of Sydney (Hyon, 1996). Systemic functionalists are interested in how language is used to accomplish everyday social life. They believe that language is ‘functional’ in that it serves a social purpose and ‘systemic’ in that it is organized around ‘systems of choices’ which language users have access to in order to realize meaning. However, the semantic choices a language user may make are not random, but rather are influenced by the social and cultural context\(^1\) (Eggins, 2005; Bawarshi and Reiff, 2010).

In Halliday’s view, communicative events can possess three metafunctions: ideational, interpersonal and textual. These metafunctions are in turn linked to three parameters of context which he terms context of situation: field, tenor and mode. Field represents the subject matter and activity type of a text. It is directly linked to the ideational metafunction which uses language to convey factual information such as what is happening, what will happen and what has happened. Field influences language features such as vocabulary choice and verb tense (Carstens, 2009).

\(^1\) Halliday does not elaborate on social and cultural context, however.
Tenor corresponds to the relationship between the participants in the text, and is directly related to the interpersonal metafunction which has to do with a speaker’s attitude and the maintenance of social relations. Tenor influences such elements as expression of probability, obligation, necessity, and attitude. Finally, mode refers to the rhetorical channel and function of the discourse and is linked to the textual metafunction which has to do with a text’s coherence and cohesion. Mode influences text organization (Carstens, 2009; Flowerdew, 2011).

Contexts of situation are not unique; rather different configurations of field, tenor and mode often reoccur making up different situation types, or scenarios of ‘persons, actions and events’ which give meaning to what is said. Situation types become conventionalized over time and certain semantic and lexico-grammatical features become associated with them leading to different registers, which describe “what actually takes place (the ‘field’), how participants relate to one another (the ‘tenor’), and what role language is playing (‘the mode’)” (Bawarshi and Reiff, 2010: 30).

Halliday’s main focus, therefore, was on what he termed registers as opposed to genres. In fact, Halliday was ambiguous in terms of what role genres should play in his model, sometimes relating them to mode, other times to field, and yet other times to all three parameters (Martin, 1992). Nevertheless, his ideas concerning the connection between situation types and semantic and lexico-
grammatical patterns paved the way for subsequent systemic functionalists to focus on how genres could fit into a systemic model (Hasan, 1984; Coffin, 1997). Perhaps the most influential in this aspect was Martin (1992) who argued that genres should be dealt with separately from registers.

Martin (2009) argued that genre constrains how the register variables tenor, field and mode can combine. In addition, the job of genre is to “to specify just how a given culture organizes…meaning potential into recurrent configurations of meaning and phases meaning through stages in each genre” (Martin, 2009:12). Finally, Martin contended that while register functions at the level of context of situation, genre functions at the level of context of culture which “includes the purposes, attitudes, values and shared experiences of people living in a particular culture” as well as “culture-specific expectations” (Carstens, 2009: 33). Thus, genres are recurrent configurations of meaning, and a system of genres denotes a culture.

Therefore, in the view of the Sydney School, context of situation, context of culture, genre and register are inter-related. As Paltridge explains, “the overall generic structure of the text is, in most systemic genre analysts’ view, a product of the genre, and, in turn [part of] the context of culture – that is, part of a culturally evolved way of doing things – whereas language features are a result of the particular context of situation or register” (2001: 46).
Also, Martin (2009) believes genres are composed of different stages, and field, tenor and mode could vary from one stage to another. He defines genre as a “staged goal-oriented social process” and explains further:

(i) staged: because it usually takes us more than one phase of meaning to work through a genre,(ii) goal-oriented: because unfolding phases are designed to accomplish something and we feel a sense of frustration or incompleteness if we are stopped,(iii) social: because we undertake genres interactively with others (Martin, 2009: 13).

Thus, Martin’s definition reflects Halliday’s concern for linking form, function and social context (Hyon, 1996) but builds on it by “showing how social purposes/motives are linked to text structures, and how these are realized as situated social and linguistic actions within register (Bawarshi and Reiff, 2010: 33).

Genre analysis done in the Sydney School tradition generally begins by identifying social purpose as represented by what Hasan called a genre’s ‘generic structure potential’ (Halliday and Hasan, 1985: 64). Hasan highlights the fact that representatives of a particular genre may vary significantly as there is a range of textual structures available to a genre consisting of obligatory, optional and recurrent elements. She contends that the obligatory elements and their sequence define the genre to which a text belongs.
Once the generic structure potential has been identified, the analysis turns first to register, which is described in terms of field, tenor and mode, then to language metafunctions. Finally a micro-analysis of semantic, lexico-grammatical and phonological/graphological features is made (Bawarshi and Reiff, 2010).

The Sydney School genre-based pedagogy originally developed in the 1980s to address the needs of disadvantaged and second language students in the Australian public school system. It was developed in part to counter the existing method of teaching writing which seemed to ignore the context in which texts function, as well as the social process by which genres are acquired (Bawarshi and Reiff, 2010). Rather, the existing method focused on improving grammar, punctuation, spelling and handwriting at sentence and word-level as opposed to how to write a good text. Proponents of the approach argued for a visible pedagogy which made explicit a text’s structure and social functions and could ultimately empower those students who would not normally have access to the academic and cultural cultures in which they needed to function.

The Sydney School genre-based pedagogy focused on school genres\(^2\) which were associated with academic success such as recount, narrative,

\(^2\) What SFL classifies as school ‘genres’ may be classified as text-types by other approaches.
description and report, along with their respective generic structures and with the lexical and grammatical features associated with these. Based on this taxonomy and drawing on Vygotsky’s dialogic model of learning, a ‘teaching-learning cycle’ (Rothery, 1994) was developed involving the teacher providing scaffolding tasks in order to encourage learner participation in constructing learning tasks. A five-stage model of classroom interaction is then used to present texts to learners consisting of the following:

1. Building the context: An example of the target genre is presented to the students

2. Modelling and deconstructing the text: The social purposes of the text are discussed, and the various stages of the text are then analyzed in conjunction with some of the language features involved in construction of each stage

3. Joint construction of the text: Students write examples of the target genre as a shared activity with guidance from the teacher

4. Independent construction of the text: Students independently research and write examples of the genre

5. Linking related texts: Features of the text are again discussed in order to build a strong understanding of the nature of the genre. (Flowerdew, 2011; Christie and Unsworth, 2006).

The strength of this approach to genre analysis and pedagogy is its potential for identifying generic structure as well as lexico-grammatical and cohesive features associated with such structures and making these explicit to the student through an accessible ‘teaching-learning cycle’. However, critics have objected to the perceived formalism of such an approach as well as its
tendency to view genres as ‘givens’ without taking into account their dynamic nature (Bawarshi and Reiff, 2010; Johns, 2008). As the Sydney School pedagogy places such emphasis on “acquisition of de-contextualised texts” (Johns, 2008: 245) it tends not to devote attention to how genres evolve according to the demands of the situation, or take into account the reader-writer relationships and values of the discourse community in question. In that sense, the ESP approach to genre pedagogy is better situated.
1.1.3 The ESP School

Like the Sydney School, the ESP School also has a linguistic focus. However, while the Sydney School can trace its theoretical underpinnings directly to systemic functional linguistics, the ESP School has no such apparent links to a particular linguistic or pedagogic tradition. It claims to be pragmatic as opposed to theory-centered. In addition, its focus has been mainly pedagogic as it explores the relationships between communicative purposes and textual features in order to develop better materials for the ESP classroom (Flowerdew, 2011).

Thus, a central concern of the ESP School is aiding non-native speakers of English in higher education at English-medium universities to develop competency in a range of written genres with a view to optimizing their career opportunities, positive identities and life choices (Hyland, 2003). Emphasis has been placed on providing these students with the language resources and skills which are necessary in order to gain access to academic and professional discourse communities. Nevertheless, in order to achieve this goal, the ESP School must necessarily express a view on language. In Hyland’s (2003) opinion, the ESP School draws to a degree on both New Rhetoric and Systemic Functional Linguistics.

Swales (1990), considered one of the fathers of the ESP School, was one of the first linguists to try to understand the complexity of the
production/interpretation process of many conventionalized professional and academic discourses. His was the first widely accepted definition of genre in the ESP tradition:

A genre comprises a class of communicative events, the members of which share some set of common purposes. These purposes are recognized by the expert members of the parent discourse community, and thereby constitute the rationale for the genre. This rationale shapes the schematic structure of the discourse and influences and constrains choice of style...In addition to purpose, exemplars of a genre exhibit various patterns of similarity in terms of structure, style, content, and intended audience. If all high probability expectations are realized, the exemplar will be viewed as prototypical by the parent discourse community (Swales, 1990: 58).

Though indeed Swales (1990) allowed for certain differences among members of the same set of communicative events, he contended that, to be considered prototypical, members should exhibit certain commonalities. Thus, they should come from the same parent discourse community and should share common, communicative purposes expressed by means of a similar schematic structure through a series of what he called moves and steps. The moves could be obligatory or optional, and they could vary in their sequencing, be repeated or be embedded one within another (Swales, 1990). In addition, the steps within the moves should exhibit typical realizations, or “typical conventionalized, verbalization patterns” (Flowerdew, 2011: 123) which are recognized as such by the discourse community. He did, however, point out that, while there is not always a unique realization pattern for each move, there is a set of realizations which each move has a good possibility of containing.
Swales’ (1990:9) approach emphasizes the role of the discourse community which he defines as “socio-rhetorical networks that form in order to work towards sets of common goals.” He suggests they exhibit six defining characteristics. Firstly, they subscribe to a set of “common public goals” which can either be made explicit or be implicit (Swales, 1990: 24). Secondly, the discourse community should have “mechanisms of intercommunication” such as newsletters, meetings, and journals which would allow them to reach these goals (Swales, 1990: 25). Thirdly, members should use these means of communication in order to participate fully in the discourse community. Fourthly, a discourse community should have and use at least one recognizable genre to further their aims. Fifth, a discourse community should use some specific lexis and shared, specialized terminology. Finally, there should be a threshold level of knowledge and expertise for membership.

The ESP School’s approach to genre analysis has generally been to first determine the goals of a particular discourse community and then to describe how structure as well as the lexico-grammatical features exhibited by a genre helps the discourse community achieve those goals (Bawarshi and Reiff, 2010). Generic structure is described in terms of moves and steps. Each move coincides with a distinctive communicative act intended to serve a particular communicative purpose. Swales’ (1990) CaRS (‘Create a Research Space’) model of generic staging is one of the best known examples of genre
analysis in the ESP tradition. This model, which proposes a generic structure of a research article introduction, is a leading example of Structural Move Analysis used to describe global organizational patterns of specific genres (Hyon 1996).

However, Bhatia (1993) argues that while Swales’ definition ably fuses linguistic and sociological factors essential in genre construction, it omits certain psychological, particularly cognitive, factors which are also important, “thus undermining the importance of tactical aspects of genre construction which play a significant role in the concept of genre as a dynamic social process, as against a static one” (Bhatia, 1993: 16). He offers the following definition:

Genre is a recognizable communicative event characterized by a set of communicative purpose(s) identified by the members of the professional or academic community in which it regularly occurs. Most often it is highly structured and conventionalised with constraints on allowable contributions in terms of their intent, positioning, form and functional value. These constraints, however, are often exploited by the expert members of the discourse community to achieve private intentions within the framework of socially recognized purpose(s). (Bhatia, 1993: 13)

Bhatia thus extends Swales’ original definition by highlighting the fact that genres often display a duality: individual members’ personal goals are often furthered alongside, or embedded within the socially recognized and institutionally accepted goals a particular genre reflects. He also highlighted
the fact that genres are not static, but are in fact dynamic, expert members being able to bend them to a degree in order to meet both sets of goals. Bhatia contends that, in the real world, discourse is “complex, dynamic, versatile and unpredictable, and often appears to be confusing and chaotic” (2004: xiv) creating the need for a different type of genre analysis which allows for, and embraces this fact instead of one which emphasizes genre integrity and purity. In particular, he argues that while ESP genre analysis has contributed significantly to our understanding of the nature of discourse, its development has been constrained by its pedagogical focus leading to a reliance on “simplified and idealized genres” in the language teaching and learning context (2004: xiv).

Working within the ESP School tradition, Bhatia went on to develop Critical Genre Analysis (CGA), “a multiperspective and multidimensional approach…which integrates the analysis of discursive and professional or disciplinary practices in the context of specific professional or disciplinary cultures” (2008: 180) in order to explore how expert members of a discourse community construct, interpret, use, and above all exploit genres to achieve socially recognized communicative purposes while at the same time furthering

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3 Bhatia clearly points out that Critical Genre Analysis (CGA) is different from Critical Discourse Analysis (CDA). “CDA draws on the critical theory as cultural critique, and focuses on social relations of domination, typically grounded in class relations, including race and gender, specifically focusing on their oppressive sides…CGA, on the other hand, is a way of “demystifying” professional practice through the medium of genres.” (2012: 23).
private intentions. Bhatia’s idea is to focus not only on the generic artifact itself, but rather on the production of the generic artifact:

[CGA] focuses as much on generic artifacts, as on professional practices, as much on what is explicitly or implicitly said in genres, as on what is not said, as much on socially recognized communicative purposes, as on “private intentions” (Bhatia, 1995) that professional writers tend to express in order to understand professional practices or actions of the members of corporations, institutions and professional organizations (Bhatia, 2012: 23)

Bhatia’s (2008) model aims to integrate investigation into four different discourse ‘spaces’: textual space, tactical space, professional space and social space. ‘Textual space’ concerns the text itself, focusing on surface-level properties of discourse\(^4\) taking into account co-text, but not how these properties interact with, or are influenced by, context in a broad sense.

Bhatia (2008) explains it is essential to extend investigation into tactical and professional space in order to capture the complex reality of language use. ‘Tactical space’ focuses on how specific discourse communities use and exploit genres to carry out everyday tasks, while ‘professional space’ centers on professional practice. Both ‘tactical’ and ‘professional’ space take into consideration socio-cognitive aspects of genre, reflecting the historical trend to

\(^4\) Including “phonological, lexico-grammatical, semantic, organizational (including intersentential cohesion) and other aspects of text structures (such as ‘given’ and ‘new’, ‘theme’ and ‘rheme’) or information structures (such as ‘general-particular’, ‘problem-solution’, etc.) (Bhatia, 2004: 19).
extend discourse analysis beyond text. Analysis of these ‘spaces’ considers not only the role of the writer, but also the role of the reader and how the reader’s knowledge of the world, or the cultural, the professional and institutional context influences how the text is interpreted and used.

The final space is social space in which discourse is seen as social practice, and reflects growing social-critical concerns. Emphasis is placed on understanding the identity of community members, social structures that genres help to maintain or change within the community, and the advantages and disadvantages genres may bring to a particular set of readers.

ESP genre analysis has been highly successful in providing detailed information about both macro-structure and lexical and grammatical features associated with particular genres and linking these to purpose or function. It has contributed greatly to the body of knowledge concerning discipline-specific genres. ESP genre pedagogy, while not culminating in a specific teaching model as is the case of the Sydney School’s teaching-learning cycle, uses these descriptions as discourse models and develops classroom activities to raise students’ awareness.

Nevertheless some scholars have criticized the approach for being overly prescriptive and for emphasizing genre competence over genre performance. Proponents of critical discourse analysis in particular have highlighted what
they see as a pedagogy of accommodation which has resulted from non-native students gaining access to academic and professional discourse communities through the explicit teaching of genres. They charge genres have been taught and acquired without a critical appraisal of the disciplines, fields or institutions which produced them (Bawarshi and Reiff, 2010). Perhaps Bhatia’s proposed (2008) model will go some way toward rectifying these weaknesses.
1.1.4 New Rhetoric

Linguistic approaches to genre, as have been seen, highlight the role of linguistic form in achieving certain communicative purposes which result in communicative actions. The New Rhetoric approach to genre, however, is not informed by linguistic theory, but is more social in nature. It began in the 1960s and 1970s with a revival of the classical art of rhetoric which Aristotle defined both as “the art of discovering in any case all the available means of persuasion” and as “the art and practice of coming to sound judgment” (Aristotle, 2014), but explicitly linked this to “actual discursive practices and products of student writers (Lunsford, 2007:5).

New Rhetoric highlights situational context and emphasizes the social purposes of genres and the social actions stemming from these purposes (Bawarshi and Reiff, 2010). Bazerman argued that knowledge of social context surrounding texts is essential for helping writers select rhetoric that is appropriate for a particular writing situation, and that it is not sufficient just to give students “the formal trappings of the genres they need to work in” (1988: 320).

While linguistically-oriented genre approaches tend to consider that certain types of text represent a genre, Bazerman explains that:

Genres are not just forms. Genres are forms of life, way of being. They are frames for social action. They are environments for learning. They are locations within which
meaning is constructed. Genres shape the thoughts we form and the communications by which we interact. Genres are the familiar places we go to create intelligible communicative action with each other and the guideposts we use to explore the familiar (1997: 19)

For Coe and Freedman, “a genre is a socially standard strategy, embodied in a typical form of discourse that has evolved for responding to a recurring type of rhetorical situation” (1998: 137). Coe postulates that “a genre is not just text types: they imply/invoke/create/(re)construct situations (and contexts), communities, writers, and readers” (2001:199). Therefore, emphasis is placed on the functional relationship between a type of text and a type of situation.

Also, according to Coe (2001: 198), “a genre embodies socially established strategies for achieving purposes in rhetorical situations”. As a result, for New Rhetoricians then, understanding a genre does not involve identifying its structure, or lexico-grammatical features or rhetorical patterns, but exploring the social, cultural and institutional contexts in which they are found. New Rhetoric seeks to explore the socially constructed power relations between texts, their writers and the students who are potentially oppressed by them within the domain of first language university students. Therefore, its research methodology has been characterized by the use of ethnographic methods of data collection and analysis (Bawarshi and Reiff, 2010).
Finally, while Coe (2001) postulates that “understanding genre will help students become versatile writers, able to adapt to the wide variety of writing tasks they are likely to encounter in their lives”, no specific genre analysis method or pedagogy has developed. Perhaps due to its social nature, many New Rhetoric scholars argue that genres are too complex, varied, dynamic and open to manipulation by participants to be taught, and that genres are acquired through participation in ordinary and professional life. Others, however, argue that being able to distinguish between the genres which are highly conventionalized (such as a wedding ceremony or coronation) and the genres which are open to creativity (such as a personal letter or poem) form an important part of an individual’s genre knowledge (Flowerdew, 2011).

One problem with the New Rhetoric approach to genre pedagogy, however, from the point of view of an EALP student, is that it is aimed at advanced level native speakers. As a result, their pedagogical materials are not sufficiently scaffolded and do not discuss sentence-level linguistic issues which inevitably arise with non-native speakers of lower proficiency (Johns, 2008). New Rhetoric is not, after all, a linguistically-oriented approach and was never intended specifically for use by novice students such is the case of the Sydney School, or for those who do not have English as a first language. Nevertheless, while very different from the two linguistically-oriented views on genre presented previously, New Rhetoric ideas have had a profound effect on them.
For example, New Rhetoric has encouraged the Sydney School to update its teaching-learning cycle to include a preliminary stage – building the context – in an attempt to take into account the social relations and contexts behind a text which may not be visible in its structure and lexico-grammatical features (Bawarshi and Reiff, 2010). Furthermore, it has inspired ESP researchers to link generic structure and verbalization patterns explicitly to individual discourse communities and their goals, values and practices, and to adopt a more ethnographic approach to their analyses (Tardy, 2011). New Rhetoric also encouraged the ESP School to recognize that genres are not static, but rather are ever evolving and despite conventionalisms can exhibit a degree of creativity. Genres can serve multiple purposes and they are often intertextual and hybrid in nature in that they draw on the participants’ previous experience with similar and other genres (Flowerdew, 2011). These ideas have particularly influenced Bhatia to develop CGA which integrates an analysis of social context with a textual analysis (Tardy, 2011).

In summary, this section has looked at three genre traditions which share certain characteristics, but also exhibit certain differences. For instance, the ESP School is similar to the Sydney School in that they both share the belief that function and context are the determining factors in overall structure of any communicative event (Bawarshi and Reiff, 2010). Both schools have traditionally been interested in global text structure as well as sentence-level linguistic features characteristic of specific genres. Both schools accept that
there can be certain variations within two texts of the same genre, since, as Hyland (2002: 120) explains, texts are "spread along a continuum of approximation to core genre examples with varying options and restrictions operating in particular cases".

However, one difference between the Sydney approach and the ESP approach involves the type of text which is the subject of their analyses. Paltridge (2002) distinguishes between genre, the subject of the ESP School, and text type, the subject of the Sydney School. He argues that genres are recognizable according to external criteria and are named by the members of the discourse community who use them. Genres, thus, include such items as laboratory reports, research articles and, in the realm of law, judgments. Text types, in contrast, are "rhetorical modes that follow systematic internal discourse patterns" and include problem-solution, exposition and argument (Flowerdew, 2011: 127). These are termed elemental genres by the Sydney School.

Moreover, while the focus of the ESP School is to define the communicative purpose of a particular discourse community, the Sydney School has concentrated on identifying social purpose. This has led to a shift in pedagogy as ESP approaches have tended to be more pragmatic, focusing on acculturation, while the Sydney School and New Rhetoric have tended to have a more overtly political agenda with a focus on empowerment of student
writers in primary or secondary school as well as in higher education (Bawarshi and Reiff, 2010).

Also in terms of pedagogy, both the ESP and Sydney Schools advocate a visible pedagogy through which the explicit teaching of genres can help disadvantaged learners gain access to otherwise closed academic and professional cultures. Nevertheless, the target audience of the two schools has been different. The Sydney School approach has differed from both the ESP and the New Rhetoric approach in its focus on primary and secondary school genres and nonprofessional workplace texts rather than on university and professional writing (Hyon, 1996). Thus their target audience includes disadvantaged or non-native speakers of the language in the public school sector. Though more recently, the Sydney School genre pedagogy has been applied to ESL in university settings (Carstens, 2009), Flowerdew (2011) clarifies that it has not been greatly employed in ESP settings. By contrast, the target of the ESP School has been, principally, graduate-level, international, non-native speakers of English studying at English-medium universities in Britain and abroad (Carstens, 2009; Bawarshi and Reiff, 2010).

Nevertheless, as Bhatia points out, genre analysis, no matter the orientation from which it is approached, has one aim: “the study of situated linguistic behaviour in institutionalized academic or professional settings” (2004:22). Therefore, whether defined according to the New Rhetoric tradition as
‘typification of rhetorical action’ (Miller, 1984; Bazerman, 1994; Berkenkotter and Huckin, 1995); according to the Sydney School tradition as ‘regularities of staged, goal-oriented social processes’ (Martin, Christie and Rothery, 1987; Martin, 1992); or according to the ESP School as ‘consistency of communicative purposes’ (Swales, 1990: Bhatia, 1993), genre analysis in the three traditions described above share six important common assumptions outlined below.

Firstly, genres are identifiable communicative events which serve certain communicative purposes. Secondly, these communicative purposes are recognized and understood by members of the discourse community in which they are used. Thirdly, genres are highly structured and conventionalized with constraints on allowable contributions both in terms of lexico-grammatical features which they can display, and in terms of purposes which they can seek to achieve. Fourthly, expert members of the discourse community have greater knowledge and understanding of a particular genre than a novice member of the discourse community or outsider, and often use this knowledge and understanding of generic resources to exploit the genre in order to achieve both private and institutional aims. Fifthly, genres reflect the disciplinary, organizational or professional cultures in which they are found and thus focus on social actions embedded in these cultures. Finally, genres have a particular integrity resulting from a combination of textual, discursive and contextual factors (Bhatia, 2004: 23).
All three approaches to genre, then, emphasize that genres are highly conventionalized, while recognizing that they are, at the same time, able to be exploited and manipulated in order to achieve personal aims. This can seem contradictory, but as Bhatia explains, “the nature of genre manipulation is invariably realized within the broad limits of specific genres and is often very subtle” (2004:25).

Having looked at the evolution and different approaches to genre and genre analysis, it is time now to consider legal genres, in particular the ones that are the focus of this study, in more detail.
1.2 Legal genres

This section will introduce legal genres in general before moving on to the two genres studied in this project, U.S. Supreme Court opinions and American law review articles.

1.2.1 Classifying legal genres

Bhatia divides written discourse genres in the field of law into four major types depending on their context: pedagogic, academic, juridical or legislative (1987: 229-230). In the pedagogic context he includes materials specifically for use in law school classes such as textbooks and casebooks, a collection of excerpts of legal cases and law review articles along with historical notes and editorial commentary. Academic genres, on the other hand, comprise law review articles as well as student legal essays. Juridical genres consist of cases and judgments, in other words those genres deriving from the judiciary. Legislative genres consist of genres deriving from legislators including instruments of primary and secondary legislation such as acts of parliament and rules and regulations. In addition, legislative genres include those documents which would be binding in a court of law such as contracts, wills and insurance policies. As opposed to the three other legal genre types, legislative genres, including both sub-sets above, are considered ‘frozen’ because “form-function correlations are rather fixed and every attempt is made to restrict the number of interpretations that a particular legislative statement can attract” (Bhatia et al., 2004: 206).
While Bhatia’s 1987 classification is useful in providing insight into the wide range and variation of written legal genres, a more recent treatment of legal genres (Bhatia et al. 2004) is perhaps more helpful from the point of view of the law student and legal education. In this view, the different written legal genres are placed on a continuum, from academic practice to professional practice, demonstrating how they are intertextually and interdiscursively linked as well as describing the strategic skills which must be developed at different stages in a lawyer’s education (undergraduate, post-graduate and in practice) in order to master the necessary genres (Bhatia et al. 2004: 205).

Certain ‘broad-based genres’, basic genres such as legislation, judgments, legal textbooks and law cases, form the basis of legal study and practice. Law students must develop both a linguistic and discursive awareness of basic generic principles and lexico-grammatical resources inherent in these genres as well as strategies for coping with their interpretation. These basic genres are then intertextually and interdiscursively woven together through ‘legal research, legal argumentation, analysis of legal issues and legal thinking’ (Bhatia et al., 2004: 204) to conform academic legal genres such as case briefs⁵ (known as the case note in the UK), problem-solving essays⁶ (akin to the UK legal problem question answer), or the critical/argumentative essay.

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⁵ Case briefs are defined as “summaries of case judgements or opinions” (Candlin et al., 2002: 304).
⁶ In problem-solving essays, “by far the most common type of examination in law school…students are usually given a scenario—a fact situation—and are asked to analyze the scenario in light of the relevant law(s)” (Candlin et al., 2002: 305)
They are intertextually woven together as the academic genres will make direct reference to one or more of the basic genres as evidence in order to bolster an argument. The basic genres themselves can be highly intertextual as in the case of judgments using legislative provisions as authority to support the holding, or textbooks citing cases and legislation to exemplify a specific topic. They are interdiscursively woven together as academic genres will often exploit conventions of legislative or judicial discourse to add an air of authority, and show evidence of deductive reasoning and careful consideration of the legal problem in question.

Thus, for the law student “it is not simply a question of handling one genre but several at the same time… whether one considers legal cases, legislative provisions or textbooks. None of these genres can be handled adequately in isolation” (Bhatia, 1993: 179). In other words, a law student must be able to understand and use different legal genre types in order to be successful on their course. For the non-native Master of Laws (LLM) student whose first language is not English, and who is trained in a completely different legal and law education system affording them little or no previous knowledge of the US or UK legal genres, this can prove especially challenging.

That is the main reason why the present study has aimed to compare two very different legal genres representing two different legal genre types, but which would potentially be handled by an LLM student in the U.S. The first genre, the
U.S. Supreme Court opinion, constitutes one of the ‘broad-based’, basic judicial genres which law students are expected to read and understand, and which can underpin and be intertextually and interdiscursively linked to the academic essays and briefs that they will be asked to produce. Law students would also be expected to read and understand the second genre, the American law review article, which could inform their thinking and writing as well. In addition, as the law review article can be said to represent the epitome of a law student’s ability to engage in legal thinking, analysis and argumentation, a keen student would aspire to produce one himself.

For purposes of the current study it is essential to find a framework within which to describe the two legal written genres chosen as a focus, U.S. Supreme Court opinions and law review articles. Given its pragmatic nature, its pedagogical origins, its target audience of graduate-level, international, non-native university students, its focus on professional and academic genres, and its concern with communicative purpose, the ESP school seems most adequate for supplying such a framework. Thus, from Swales’ (1990) original definition, and Bhatia’s (1993) extension of it, five parameters can be identified: Context, communicative purposes, discourse community, organizational pattern or structure and constraints on allowable contributions. Each of these will be briefly discussed below.
A communicative event comprises not only the discourse itself and its participants, but also its context. Context can be defined here as “the role of that discourse and the environment of its production and its reception, including its historical and cultural associations” (Swales, 1990: 46). Bhatia (1993) also concludes that it is essential to place a given text in a situational (including its historic, socio-cultural, philosophic and/or occupational associations), as well as an institutional context.

In addition to context, a genre can be described in terms of its communicative purposes. In fact, both Swales (1990) and Bhatia (1993) contend that a shared set of common purposes is the main criterion for determining if a set of communicative events comprises a genre. Members of a particular professional or academic community who regularly and interactively engage in certain discourse genres as part of their daily work are referred to as the discourse community. These members have specialized knowledge of both the communicative goals of their community and the structure of the discourse genres used to fulfil those goals (Bhatia, 1993).

Genres are easily recognizable because they adhere to specific organizational patterns, structured around a predictable series of moves and steps which serve as the vehicle for conveying their communicative purposes (Swales, 1990). In fact, conventionalism is a key element in any definition of genre (Durán, 2000). That is why in addition to following a predictable pattern,
writers must also conform to certain standard practices which are deemed acceptable within the limitations of a particular genre (Bhatia, 1993). They are, in effect, constrained by certain practices which have come to be expected by the discourse community.

For example, both genres analyzed in this study reflect an analytical tool and organizational method known as ‘IRAC’ which is essential to many types of legal writing training (Candlin et al., 2002) and is widely taught in US law schools. Its use ensures that analysis and presentation of a situation from a legal perspective follow the formula: Identify the issue(s); state the applicable rule(s); apply the legal rules(s) to the facts of the case; and state the conclusion. IRAC, then, is an architectural blueprint for the legal discussion. It gives legal writing continuity and clarity and organizes the contents of the discussion. IRAC provides legal support and analysis for the issue posed by the problem and guides the writer toward a well-supported conclusion (Yelin and Samborn, 1996: 381).

In the following section, the two legal written genres which are the subject of this study, U.S. Supreme Court opinions and American law review articles, will be discussed in turn in terms of the five parameters highlighted above used in the characterization of a genre.
1.2.2 U.S. Supreme Court opinions

Article III, Section 1 of the Constitution provides that "the judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish." Under this section and the Judiciary Act of 1789, the United States Supreme Court was created.

As an institution, the United States Supreme Court carries out three duties (van Geel, 2001). Firstly, it settles disputes between parties. As the highest appellate court in the federal judicial system, it reviews the decisions of inferior federal courts for errors of law, and it also reviews constitutional issues raised in both federal and state courts. Secondly, by ruling on what is constitutionally permissible, the Supreme Court affects public policy. Lastly, by offering an explanation as to why a specific conduct has been considered constitutionally permissible or impermissible, the Court educates the general public on acceptable and unacceptable behavior.

The visible result of a Supreme Court decision is the Supreme Court opinion, which belongs to the type of legal written discourse genre associated with what Bhatia (1987) categorizes as the judicial context. Nevertheless, Supreme Court opinions actually become law, albeit unenacted, through what is known as the principle of stare decisis. This principle, which arose from a need to achieve consistency and efficiency in the application of the law, states that
lower courts within the jurisdiction of a higher court of appeals are bound by decisions set forth in these courts (Friedrichs, 2001).

Supreme Court opinions do not stand alone, however, but draw on precedent (or previous decisions) for support. An opinion includes numerous references to constitutional articles and amendments, state and federal statutes, and previous lower court and Supreme Court decisions. Intertextuality, which as Bhatia (1993) points out is essential to legal documents, is inherent in Supreme Court opinions.

Of the 4000 to 5000 cases whose decisions the U.S. Supreme Court is petitioned to review annually, only 150 of the most significant are chosen (Renquist, 1987). Undoubtedly, then, Supreme Court opinions fulfil several very important purposes which can be grouped into three broad categories: operative, interpersonal and educational.

Operative purposes include serving as authentic records of all the facts of the case, the arguments of the judge, his reasoning, the judgment he arrives at and the way he does it, the kind of authority and evidence he uses and the way he distinguishes the present case from others cited as evidence either by him or by opposing lawyers. (Bhatia, 1993: 119)
In addition Supreme Court opinions have the operational purpose of creating unenacted case law by defining precedent which is binding on all lower courts within the same jurisdiction when deciding similar cases.

Interpersonal purposes include guiding future lower courts and future Supreme Courts in making decisions in similar cases, as well as providing lawyers in subsequent similar cases with evidence in favor of, or against, a particular line of argument. Supreme Court opinions also affect public policy by defining what is constitutionally permissible.

Finally, educational purposes are to educate the public in general about what is considered constitutionally permissible, and to serve as an educational tool in the law classroom where abridged opinions, especially, can be used to illustrate certain points of law and to aid students in developing skills of legal reasoning.

In legal written discourse genres, unlike in other genres, the writer, or addresser, is usually not the same person as the originator, and the reader is usually not the same person as the recipient (Bhatia, 1993). In the case of Supreme Court opinions, the nine members (8 Justices presided over by the most senior member known as the Chief Justice) are the originators, but the opinions themselves are actually drafted by law clerks.
Interestingly, law clerks in the United States, even at the Supreme Court level, are only recent graduates of law school, are not required to have any prior experience, and are not able to accumulate experience as they serve only one year with a Justice (Renquist 1987). It is not surprising, then, that The Federal Judicial Center’s *Judicial Writing Manual* advises,

> It is the unusual law clerk who has perfected a writing style that makes for a satisfactory opinion. Law clerks’ fact statements, analysis and conclusions may require major revisions. Judges should not simply be editors – no matter how capable the clerk, the opinion must always be the judge’s work. (Coffin, 1994: 198)

How much effort a judge actually puts into revision is open to question, however. For example, Judge Coffin contends most judges pay careful attention to revision only mainly during the first month a new clerk is on the job (1994). In addition, Judge Posner suggests most judges do not supervise their clerks as much as they should, thus permitting self-expression to take precedence over institutional obligations (Posner, 1985).

As has been discussed above, the originator or addresser and the writer of a Supreme Court opinion is not always the same person. Likewise, the addressee and the reader of a judicial opinion may not coincide. Consequently, the readers are not only those persons who were somehow directly involved in the case in question, as would be expected, but also other members of the legal discourse community as well.
In theory, a court ruling settles a dispute between two parties and thus the opinion should be directed to, and read by, the parties involved. In practice, however, often the litigants themselves never actually read the opinion, and simply rely on their lawyer to interpret it for them. Moreover, Kurzon (2001) lists other addressees of a judicial opinion, all of whom were somehow involved in the case before the court, including fellow judges on the same bench, judges at a lower appeal level, the judge of the trial court where the case was first heard before being appealed, and the counsel appearing before the judge.

There may be other readers as well who were not directly involved in the case at hand. As seen in the discussion on context, the Supreme Court not only plays a role in dispute settlement, but is instrumental in two other areas as well: public education as to what is constitutionally permissible, and policy making. Thus, the opinion will also be of general interest to lawyers, law students, legal press reporters and academics at large.

Finally, it is important to remember that an opinion becomes law in the sense that what is decided must be followed by lower courts in similar cases, and may set a precedent or overturn a precedent. Thus, it can be cited in future courtrooms by lawyers arguing similar cases as evidence. Therefore, Supreme Court opinions may be of special interest to practicing lawyers preparing the defense of a case with similar facts. As Bhatia (1993: 118) explains, it is little
wonder that “legal cases [or judicial opinions as they are referred to in this paper] form the most significant part of a law specialist’s reading list whether he is a law student or a practising lawyer.”

While the literature touching on the genre of official judicial opinions – or official law reports, as they are known in England and Wales – focuses mainly on those from the U.K. legal system (Maley, 1985; Bhatia, 1993; Bowles, 1995), Van Geel (2001) indicates that U. S. Supreme Court opinions are composed of four parts, each of which is broken down into one or various moves. Whereas in law review articles, for example, headings often indicate the content of the section in question, headings do not usually appear in Supreme Court opinions. Depending on the justice writing the opinion, however, the divisions may or may not be signaled by a Roman numeral or capital letter.

Briefly, the first part of a U.S. Supreme Court opinion identifies the case by: stating its name and docket number; optionally summarizing the issue and holding; and examining the case history, both the facts of the case and the procedural history. The second part establishes the legal claims by determining the issue or issues and establishing the rules which govern those issues. The third part, the reasoning, is the main body of the judicial opinion in which the Court, above all, strives to justify its decision by analyzing the
application of the legal rules to the facts of the case. In the final part, the conclusion, the holding is declared.

After close analysis of the corpus documents, various moves and steps were identified. These are reflected on the table below.

<table>
<thead>
<tr>
<th>Part one: Case identification</th>
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<tbody>
<tr>
<td>Move I: Stating the Name and Docket Number</td>
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<tr>
<td>Move II: Summarizing the Issue and the Holding (Optional)</td>
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<tr>
<td>Move III: Examining Case History</td>
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<tr>
<td>Step 1: Stating Facts of the Case</td>
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<td>Step 2: Giving Procedural History</td>
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<tr>
<th>Part two: Rules / legal claims</th>
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<tr>
<td>Move I: Establishing the Legal Claims</td>
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<tr>
<td>Step 1: Determining the Issue(s)</td>
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<tr>
<td>Step 2: Establishing the Rules</td>
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<tr>
<th>Part three: Reasoning</th>
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<tr>
<td>Move I: Analyzing the Application of the Legal Rules to the Facts of the Case</td>
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<tr>
<th>Part four: Conclusion</th>
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<tr>
<td>Move I: Declaring the Holding</td>
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Figure 1.1 Move structure of U.S. Supreme Court opinions

In part one, case identification, the first move, stating the name and docket number, includes the court in which the case has appeared (e.g. Supreme Court of the United States), the docket or identification number (e.g. 97-6270) and the name of the case, which is based on the names of the parties
involved. The party which is listed first is the petitioner, or the party seeking review and reversal of the lower court’s decision. The party listed in second place is seeking affirmation of the decision (e.g. Gerald R. Caron, petitioner v. The United States). Finally, the date the decision was handed down, in brackets, is followed by the name of the Justice who was in charge of writing the opinion (e.g. Justice Scalia delivered the opinion of the Court.)

The second move, summarizing the issue and the holding, which is optional, can comprise a brief, one-paragraph summary of the main issues and the holding. For example,

The question with which we are presented is whether this general rule applies to tribal attempts to tax non-member activity occurring on non-Indian fee land. We hold that it does and that neither of Montana’s exceptions obtains here. Atkinson Trading Co. v. Shirley (2001: 645).

The third move, examining case history, consists of two steps. The first step, stating the facts of the case, includes who did what to whom, when, how and why, as well as any information regarding applicable law such as statutes, regulations or policies governing the dispute. It is necessarily written in the past tense. Step two, giving procedural history, includes information about who brought the action originally, what the result of the first trial in the trial court (or Court of First Instance) was, who appealed to an intermediate appellate court and the result of the appeal, and finally who has appealed to (or petitioned) the Supreme Court. For example,
Applying the principles articulated in Vernonia School Dist. 47Jv. Acton, 515 U.S. 646 (1995), in which we upheld the suspicionless drug testing of school athletes, the United States District Court for the Western District of Oklahoma rejected respondents’ claim that the Policy was unconstitutional and granted summary judgment to the School District… The United States Court of Appeals for the Tenth Circuit reversed, holding that the Policy violated the Fourth Amendment… We granted certiorari, 534 U.S. 1015 (2001), and now reverse. Board of Education Pottawatomie County v. Earls (2002: 1)

In part two, rules and legal claims, there is one move, establishing the legal claims, consisting of two steps. The first step is ‘determining the issue(s)’. The issue (the I of the IRAC Method), “those questions that the party seeking reversal would answer differently from the party seeking to affirm the decision” (van Geel, 2001: 15), is, basically, the reason the case has come to court to begin with. It is usually signaled by the phrase ‘the question presented is…’ or ‘the case presents the question whether…’. Often, the issue is introduced in Section I, Move II, if that optional move is present.

This case presents the question whether an application for state postconviction relief containing claims that are procedurally barred is ‘properly filed’ within the meaning of this provision. Artuz v. Bennet (2000: 4)

We consider here whether a private damages action may lie against the school board in cases of student-on-student harassment. Davis v. Monroe City Board of Education (1999: 629)

The question presented is whether the handgun restriction activates the unless clause. Caron v. United States (1998: 312)
Chapter 1: The Concept of Genre

The second step, establishing the rules, comprises the legal arguments made by the parties based on the applicable rules – statutes, precedents, and constitutional amendments – as well as each party’s reactions to the arguments put forth. Therefore, this step establishes the R (Rules) of the IRAC method.

Aside from the “unless clause”, the parties agree Massachusetts law has restored petitioner’s civil rights. Caron v. United States (1998: 312)

Petitioner urges that Title IX’s plain language compels the conclusion that the statute is intended to bar recipients of federal funding from permitting this form of discrimination. Davis v. Monroe City Board of Education (1999: 636)

Part three, the reasoning, is the main body of the judicial opinion in which the Court strives to justify its decision. The A (Application) of the IRAC method is introduced in this section. This part consists of one move, analyzing the application of the legal rules to the facts of the case. In this move, the Court provides answers to the issues and “may comment upon, analyze, and react to the arguments of the parties to the case…establish the precedent value of the case and provide the interpretation of the Constitution that will be used in the future…” (van Geel, 2001: 15). Alternative reasons (or ratio decidendi as they are known in legal language) to support the Court’s opinion and particular application of the legal rules are presented. However, as Harris (1997) indicates, rarely do judges explicitly signpost these reasons. Rather they are intertwined with the Court’s justification of its decision. According to Badger
(2003: 251), “learning how to find the ratio decidendi is an important part of the training of a lawyer.”

Petitioner contends here, as he did below, that an application for state postconviction or other collateral review is not properly filed for purposes of §2244(d)(2) unless it complies with all the mandatory state-law procedural requirements that would bar review of the merits of the application. We disagree. Artuz v. Bennet (2000: 7)

Although either reading creates incongruities, petitioner’s approach yields results contrary to a likely, and rational, congressional policy. Caron v. United States (1998: 314)

Part four is the conclusion consisting of one move, declaring the holding. This move introduces the C (Conclusion) of the IRAC method. This is the last statement of the opinion, in which the lower court’s decision is upheld or reversed. In most cases this will be summed up in just one sentence, such as ‘the judgment of the Court of Appeals is affirmed’, or ‘accordingly, we reverse the judgment of the Courts of Appeals, and followed by the directive, ‘it is so ordered’.

As expected, there are several constraints on the style and language of a judicial opinion. The Supreme Court could simply declare a “winner” in each case without offering any justification for its decision, but if it did so, it would not be fulfilling two of its basic duties: to educate the public as to what is constitutionally permissible, and to guide lower courts and future Supreme
Courts in making decisions in future cases of a similar nature. Thus, according to van Geel,

The justices are expected to write opinions that explain the dispute before them and that are persuasive justifications of the decisions reached. All this must be accomplished within certain constraints and expectations that sharply limit the ways in which a justice may go about offering such a justification... In the absence of these constraints and expectations, the justices’ opinions could look like any other justification – moral, theological, political, economic, or practical. In other words, it is these constraints and expectations that lead a justice to write a legal opinion. This is not to say that a legal opinion is amoral, or apolitical, or otherwise impractical. It is to say that the constraints and expectations bearing down on the justices lead them to use a special legal language, certain kinds of materials, and certain modes of reasoning and analysis. The justices consequently produce opinions written in a style, fashion, and custom that reflect a long tradition of judicial craftsmanship. (2001: 34)

In other words, a persuasive, legal opinion results from observing certain limitations and meeting certain expectations as to language, materials, modes of reasoning and analysis, and style imposed by the discourse community. For example, regarding language, the legal discourse community accepts only certain legal terminology in the framing of an opinion. Moreover, the majority opinion must be agreed to by at least five of the nine justices. Therefore, “each word, phrase, sentence, and paragraph could be the subject of careful consideration and deliberate, conscious choice and agreement” (van Geel, 2001: 36). Thus, the bargaining process carried out by the justices to decide what to include in, or omit from, the opinion can often be reflected in the language used.
However, though Supreme Court justices are circumspect, this does not mean that they “mute the expression of attitude or the intended emphasis” of their written opinions (Finegan, 2010: 69). Indeed, contrary to much public belief and considerable legal posturing, Supreme Court opinions can show opinionated, even emotional language.

Regarding materials, the Supreme Court opinion should take into account only those materials, or sources deemed appropriate by the legal community (van Geel 2001). These include the Constitution, civil and criminal codes, precedent, certain legal principles and doctrines, and both legal and general English dictionaries. They do not include sources considered inappropriate such as the Bible or the Koran. In addition, the well-known IRAC method of legal analysis, which was mentioned above, must be applied. Finally, only certain modes of reasoning, known in legal language as ‘tests’, can be employed. Templin (2003), lists four primary tests: reasoning by analogy, balancing of factors tests, judicial tests, and public policy arguments Templin (2003) offers the following definitions:

- **Reasoning by analogy:** To “draw parallels between your hypothetical cases and cases that have already been decided.”

- **Balancing of factors test:** The court “literally balances the different interests to achieve a just result… [after identifying] factors to weigh in making its decision.”
• Judicial tests: “a judicial "IF-THEN" test that proves a particular element.”

• Public policy argument: “…to ask whether the underlying public policy of the rule is furthered by the application of the rule.”

Regarding style, van Geel (2001) contends that the opinion should resolve the case before the court only and not examine a wide range of related issues. It should appear objective and respond to external considerations only, not a particular justice’s personal desires and will. Moreover, views expressed in the opinion should be consistent with views expressed in previous opinions, unless the opinion specifically overrules precedent.

Finally, and in a different light, Tiersma (1999) suggests that there are three types of legal documents: operative, expository and persuasive documents. Operative legal documents are highly structured and legally enforceable. They include such documents as statutes, orders, wills, or contracts. By contrast, expository legal documents such as letters to a client or a legal memo objectively address one or more points of law. Finally, persuasive documents, such as pleadings submitted in court, aim to convince the court that a particular party’s line of reasoning is correct.

Supreme Court opinions are both interesting and unique in that they comprise characteristics of all three types of documents (Tiersma, 1999). Firstly, they are operative in that they are highly structured and contain a legally binding
order. Secondly, they are expository because the judge explains the law by making use of acceptable materials, tests and modes of analysis, and framing the language in a seemingly objective tone. Lastly, they are persuasive as the judge aims to convince the reader that the decision taken was the only rational one given the law and the facts of the case. The fact that Supreme Court opinions are operative, expository, and persuasive pieces of writing is reflected not only in their generic structure, but also in their style and in their multiple communicative purposes, which ultimately, affects the hedging strategies and functions found within them as well.
1.2.3 American law review articles

A law review, also known by its synonym law journal, features scholarly articles on a variety of legal issues. Law Reviews serve three main functions:

Aside from serving as an important academic forum for legal scholarship, the Review has two other goals. First, the journal is designed to be an effective research tool for practicing lawyers and students of the law. Second, it provides opportunities for Review members to develop their own editing and writing skills (Harvard Law Review, 2014).

Law reviews belong to what Bhatia (1987) classifies as the academic context, and their focus can be general (for example the Harvard Law Review or the Georgetown Law Journal) or specialized (for example the Harvard Environmental Law Review or Ecology Law Quarterly).

Whether they are general or specialized in nature, United States law reviews have one major difference in comparison with law journals published in other countries. While there are some faculty-edited law journals, the vast majority of even the most prestigious law journals are student-run As the Harvard Law Review explains: “Student editors make all editorial and organizational decisions and, together with a professional business staff of three, carry out day-to-day operations” (2014). Thus, students on the law review editorial board are in charge of all aspects of the publishing process: writing, proofreading, revising, cite-checking and ultimately selecting the articles to be published. It is considered quite prestigious for a student ‘to make law review’
or be invited to the editorial board as this is considered an advantage for future employment in the legal field (Volokh, 2010).

Due to the demands of the position and the prestige inherent with ‘making law review’, the law review selection process is rigorous. For example, the *Yale Law Journal* highlights that, “although it [the *Yale Law Journal*] is guided by a Board of Directors composed of alumni and faculty, all editorial decisions and content are directed by the Editors, who are selected through a competitive admissions process from each class at Yale Law School” (The *Yale Law Journal Online*, 2014). The admissions process can be based on various criteria. For example, admission to the *Columbia Law Review* includes “four elements: (1) the writing component, (2) a personal statement, (3) basic personal information, and (4) grades” (2012). The writing component could take the form of “a blind-graded exercise that tests candidates on their editing skills and legal writing ability” (*Stanford Law Review*, 2013). In other cases, it could consist of “(1) a prompt that asks you to analyze a legal question and fact pattern presented in the packet, and (2) a Bluebook exercise” (*Columbia Law Review*, 2012). Often, admission to the law review is gained through an annual writing competition. In the case of the *Harvard Law Review*, the competition consists of two parts. The first part, worth 40%, “requires students to perform a technical and substantive edit of an excerpt from an unpublished article. The case comment portion of the competition, worth 60% of the

Bluebook is a system of citation used in legal writing.
competition score, requires students to describe and analyze a recent U.S. Supreme Court or Court of Appeals decision” (Harvard Law Review, 2014).

Nevertheless, there have been criticisms of major legal publications being managed and edited by relatively inexperienced students. Judge Posner, for example, describes this system as “so strange – even incomprehensible, to scholars in other fields” (Posner, 2004). While calling for reform of the system, Posner recognizes that “the biggest obstacle to such a reform is the fact that it provides useful training for law students and signals the quality of particular students to prospective employees” (2006: 161).

Perhaps one challenge for student editors of a law review is that the contents of a law review are varied, and can include several genres. One genre is The ‘Article’. Articles are generally longer pieces of writing, up to 30,000 words (Stanford Law Review, 2013; Harvard Law Review, 2014). The Columbia Law Journal specifies that,

Articles tend to analyze a problem and suggest a solution. Such analysis usually articulates some background information to inform the reader, before turning to a novel argument. Along these lines, published articles regularly follow a traditional roadmap of introduction, background, analysis/argument, and conclusion, and provide a comprehensive treatment of a particular area of law. Articles tend to be formal in both the author’s tone and in the obligation to ground information and analysis in comprehensive substantive support via consistent citation (2012).
A second genre often seen in a Law Review is the ‘Essay’, which tend to be shorter than Articles, and differ is “substance and tone” (*Columbia Law Journal*, 2012) as well.

Essays are narrower in scope than Articles, but the subject matter should be of general scholarly interest. Essays may experiment with style, tone, and voice. The ultimate goal of an Essay is to start a new and interesting scholarly conversation” (*Yale Law Review*, 2014).

The *Columbia Law Journal* (2012) punctuates, “Their scope, topics, approaches, and insights are diverse, and there is no “typical” or preferred structure of an Essay”. Articles and Essays are generally written by “professors, judges and practitioners” (*Harvard Law Journal*, 2014) In contrast, student writing typically takes the form of Notes, Comments, Recent Cases, Recent Legislation, and Book Notes (or Book Reviews).

Notes are approximately 22 pages and are usually written by third-year students. Recent Cases and Recent Legislation are normally 8 pages long and are written mainly by second-year students. Recent Cases are comments on recent decisions by courts other than the U.S. Supreme Court, such as state supreme courts, federal circuit courts, district courts, and foreign courts. Recent Legislation look at new statutes at either the state or federal level. Book Notes, also written by second-year students, are brief reviews of recently published books (*Harvard Law Review*, 2014).

While the content of a Law Journal can be varied, the present study will concentrate on Articles due to the fact that they are written by expert members of the legal discourse community, and have a more clearly defined structure than other genres which comprise a Law Journal. In addition, Articles tend to
garner more academic respect than Essays, and are perhaps more widely used in law school classes than the other genres. Thus, the following subsections will discuss the Law Review Article in terms of the four remaining parameters which describe a genre: Communicative purposes, discourse community, generic structure, and constraints on allowable contributions.

As noted previously, there are three types of legal documents: expository, persuasive and operative documents (Tiersma, 1999). Like judicial opinions, law review articles are both expository and persuasive pieces of writing. As such, they serve mainly educational and interpersonal purposes. Unlike judicial opinions, however, they are not operative as they do not seek to modify legal relations.

Duque (2000) lists several interpersonal and educational purposes fulfilled by scientific review journals which can be applied to law reviews as well. Interpersonal purposes include providing an efficient means of communication between legal professionals; providing a forum for discussion; providing identity for a professional group or an individual author, an academic institution, or a disciplinary department or division; and providing external validation for an entire field, an academic entity, an individual, or a group. Other interpersonal purposes include inspiring faculty, other legal professionals and law students with a place to publish their work, thereby
stimulating research and legal analysis, and stroking egos of authors and institutions.

There are three educational purposes. The first is to inform the general public, or professionals in related fields, about issues of import. Another educational purpose is to teach law students the skills of legal analysis and reasoning, especially the IRAC method, and a final one is to provide an opportunity for law review student members to develop writing and editing skills.

The Stanford Law Review clarifies that “each issue contains material written by student members of the Law Review, other Stanford law students, and outside contributors, such as law professors, judges, and practicing lawyers” (2013). While that is true, Articles are generally written by expert members of the legal profession including law professors, judges, and legal practitioners (Harvard Law Review, 2014). In addition, contributions to a law review can generally also be made by members of other discourse communities whose fields relate to the topic at hand, including public officials and scholars from other disciplines such as economics or sociology, who have a special interest in a particular legal matter (Volokh, 2010). The readers of law review articles may comprise members of the legal discourse community, or related fields, who wish to keep abreast of current issues; academics and students who read and discuss them in scholarly settings; and the U.S. Supreme Court and other
federal and state courts who cite them “at the rate of at least 500 citations per year” (Volokh, 2010: 6)

Despite certain organizational differences which may be exhibited across a particular genre, U.S. law review articles commonly comprise four sections, each of which may be clearly signaled by a heading: Introduction, Background, Analysis and Conclusion (Volokh, 2010; Parish and Yokoyama, 2012). A table of contents is often provided at the beginning of each article and abundant footnotes can be found throughout, or at the end, of the article. The introduction states the problem which will be discussed, expounds the claim or central thesis surrounding that problem, and indicates the legal issues involved. Often a ‘roadmap paragraph’ appears at the end of the introduction to indicate how the article will be organized (Volokh, 2010).

The section after the introduction is often referred to as the ‘background’ section. It focuses on the facts and legal rules necessary to understanding the problem. The third section is of vital importance to the success of an article as in it the writer proposes a solution to the problem, such as a new statute, an alternative interpretation of a statute, a new constitutional rule, or a new regulation. It is also where the writer sets out to persuade readers that this proposed solution is both doctrinally sound and good policy by examining implications raised when it is applied to other appropriate cases. In other
words, the proposal is subjected to certain legal ‘tests’. In the final section, the conclusion, the claim is summarized (Volokh, 2010). After close analysis of the corpus documents, various moves and steps were identified.

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<th>Part one: Introduction</th>
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<tbody>
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<td>Move I: Summarizing the Issue</td>
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<tr>
<td>Step 1: Determining the Applicable Rules</td>
</tr>
<tr>
<td>Step 2: Determining the Issue</td>
</tr>
<tr>
<td>Move II: Announcing the Research Topic</td>
</tr>
<tr>
<td>Step 1: Specifying the Purpose of the Article</td>
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<td>Step 2: Specifying Structure of the Article (optional)</td>
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<th>Part two: Background</th>
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<tr>
<td>Move I: Examining Facts surrounding the Legal Issue in Question</td>
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<td>Step 1: Examining Historical Background</td>
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<td>Move II: Examining the Applicable Rules related to the Issue</td>
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<th>Part three: Analysis</th>
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<tr>
<td>Move I: Analyzing Inadequacies surrounding the Issue</td>
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<td>Move II: Presenting Solutions and Alternatives</td>
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<th>Part four: Conclusion</th>
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<tr>
<td>Move I: Summarizing the Article</td>
</tr>
<tr>
<td>Step 1: Reviewing Salient Arguments</td>
</tr>
<tr>
<td>Step 2: Making Recommendations for the Future (optional)</td>
</tr>
</tbody>
</table>

Part one, the introduction, consists of two moves. The first move, summarizing the issue, introduces the reader to the topic of the article. This move consists of two steps. The first one, determining the applicable rule, defines the rules
which apply to the issue to be analyzed. These rules, which are taken from the two primary sources of law – judicial precedent (case law), and legislation (statutes) – could be briefly examined. Thus, this step forms part of the ‘R’ of the IRAC method. These rules may include a specific section of, or amendment to, the Constitution, a statute in the Civil or Criminal Code, or a prior Court decision:

On June 27, 2002, in Zelman v. Simmons-Harris, the United States Supreme Court upheld Ohio’s school voucher initiative… (Harris, 2003: 9).

Article I, Section 8, Clause 1 of the United States Constitution grants Congress the power to lay and collect taxes, duties, imposts and excises… (Oring and Hampton, 1994).

No matter what the topic of the article is, whether it is an analysis of a specific law or court decision, or a broader analysis of a change in public policy, some applicable rules must be referred to.

The second step of Move one is ‘determining the issue’. This step, following the IRAC Method, states the ‘I’ or issue to be analyzed. It is interesting to note that, in general, though not always, a brief mention of Rules precedes the Issue in an introduction to a review article. The issue generally focuses on the reasoning behind a court decision (i.e. the arguments the Court gave in their opinion to support their decision), or the likely impact the decision will have on future decisions, on public policy and on society. It is rarely signaled by explicit signposting, with a few exceptions such as:
The issue of proper federal jurisdiction may arise when a party returns to court to seek enforcement of a settlement agreement arising out of a previously dismissed case (Denlow, 2003: 2).

More commonly the issue is unmarked:

The recent case of Cheek v. United States possibly signals the beginning of a major change in attitude of the federal courts toward the tax protest movement (Oring and Hampton, 1994).

It is important, at this point, to distinguish between ‘issue’ and ‘purpose’. ‘Issue’ refers to those broad questions which could be answered in different ways and which, when forming the basis of a case, may lead to different Court decisions. For example, as seen above, issues may include such questions as proper federal jurisdiction or attitude towards the tax protest movement. By contrast, ‘purpose’ refers to the explicit objective of the particular law review article, that is, the analysis of the legal ‘issue’ by placing it into a context of applicable rules and specific court decisions.

The second move in the introduction is ‘announcing the research topic’. It consists potentially of two steps. The first step, specifying the purpose of the article, is mandatory. The concrete objectives of the article are clearly signposted, and usually expressed in the future tense; however, sometimes the simple present tense is also used.

This article will discuss the Supreme Court’s analysis in Kokkonen... (Denlow, 2003: 2).
This article will examine Cheek II and its likely impact… (Oring and Hampton, 1994).

This article critiques Bess v. Ulmer… (Donley, et. al., 2002: 295).

Step two of Move two, specifying structure of the article is optional. Quite frequently, the author will specify structure and organization of the information in the article. This is marked by the use of verbal signposting (to begin with, to conclude, and to go on to), or discourse markers (In addition, Firstly):

This article is divided into six parts. Part I is the Introduction… (Thomas, 1999).

The article begins by reviewing the holding and reasoning of Bess… (Donley, et. al., 2002: 295).

In addition, the article will discuss alternative methods… (Denlow, 2003: 2).

Part two, background, consists of two moves. The first is ‘examining facts surrounding the legal issue in question’. This could consist of historical facts, perhaps leading to related course cases as in the following:

The Bess dispute came before the court as a result of the opposition of several citizens’ groups to the placement on the ballot of three controversial propositions to amend the Alaska Constitution (Donley, et. al., 2002: 296).

[John Cheek] was prosecuted for willfully failing to file federal income tax returns, and willfully attempting to evade income taxes… Thus, the word “willfully” in the criminal tax statutes in question had been interpreted as meaning the “voluntary, intentional violation of a known legal duty (Oring and Hampton, 1994).
In addition, depending on the topic, the social context may also be analyzed. For example:

It is of course understandable why no one is exactly thrilled by the prospect of being forced by the government to part with some of their income and property. This is especially true, given the high levels of taxation which exist today (Oring and Hampton, 1994).

America’s love affair with guns – or, to use a more accurate term, America’s gun cult – is a phenomenon firmly grounded in history… (Thomas, 1999).

The second move of part two is ‘examining the applicable rules’. The American and English judicial systems are unique in the importance they place on precedent, or case law as it is also known. Thus, the vast majority of articles examine past cases heard by a higher court of appeal as well as some legislation (congressional act or constitutional amendment) which may have influenced the court’s decision in the case.

In a unanimous decision the Supreme Court reversed and remanded holding that enforcement of a settlement agreement is not a mere continuation or renewal of the dismissed suit. (Denlow, 2003: 4).

On June 27, 2002, in Zelman v. Simmons-Harris, the United States Supreme Court upheld Ohio’s school voucher initiative… (Harris, 2003: 9).

This could be accompanied by the rationale which led the higher court of appeal to decide (or hold in legal language) as it did.

Essential to the Court’s holding was that the Act violated the Tenth Amendment. (Thomas, 1999)
The Court explained that the lower courts had incorrectly relied on the doctrine of ancillary jurisdiction (Denlow, 2003: 4).

In a 5-4 decision, the Court noted its “consistent rejection of the argument that ‘any program which in some manner aids an institution with a religious affiliation’ violates the Establishment Clause”… (Harris, 2003: 10).

Part three, analysis, is usually the longest as it represents the crux of the law review article, its raison d’être. Following the IRAC method, this section responds to the A (analysis of Application). In move one of this part, a subjective assessment of the issue is made, pinpointing why a solution or alternative is needed. Accordingly, this move can take one of several different approaches. For example, it can discuss:

- Why a decision was erroneous:

  The Bess court undertook this freezing of the Alaska Constitution based on extremely suspect legal grounds. (Donley, et. al., 2002: 310).

  The Brady Act, while well-intentioned, arguably focused on the wrong aspects of the market (Thomas, 1999).

- Or novel:

  Nonetheless, the recent Supreme Court decision in Cheek II may indicate the beginning of a move toward fuller and fairer treatment of the claims of tax protestors (Oring and Hampton, 1994).

- Or not universally applicable:

  Therefore, carefully crafted voucher initiatives aiding sectarian private schools may pass muster under the U.S. Constitution, but application of the Commonwealth’s
constitutional requirements could warrant a different result (Harris, 2003: 20).

- Or may lead to future errors by providing inadequate guidance for subsequent courts:

Thus, in addition to confounding any effort to place a subsistence amendment on the ballot, Bess retroactively draws into question the legality of many sections of the Alaska Constitution. How will the court respond when a disgruntled citizen sues, claiming he was deprived of rights by the ultra vires adoption of a legislatively proposed revision to the constitution? (Donley, et. al., 2002: 332).

Regardless of the approach, this move aims to analyze the weaknesses and inadequacies of a judicial interpretation of a particular court case or issue, and/or predict the future impact of the application of the rule derived from the case (i.e. the precedent).

Nevertheless, law review articles offer not only problems, but also solutions and alternatives. This is the purpose of the second move of the third part. One or more alternatives can be offered as guidance for future courts, policy makers, and legal practitioners in general. For example:

- Alternative tests. (Test here, in the legal sense, refers to “a criterion that a policy must meet in order for it to be constitutionally permissible” (van Geel, 2001: 73).

Section A of this Part will propose and describe an alternative hybrid test superior to that adopted in Bess. Section B will propose and defend the use of a single-subject test in place of the Bess test. Either or both of these alternatives would better suit the needs of Alaskans (Donley, et. al., 2002: 333).
• Alternative public policies.

...past precedents shed some light by showing what road the Congress could take in attempting to deal with a social crisis...It is often not appreciated, for example, just how far Congress could extend its Commerce Clause power if it wanted to (Thomas, 1999).

• Alternative lines of reasoning.

Particularly disturbing is a footnote, in which the Supreme Court quotes with apparent approval, from the Seventh Circuit in which it dismissed several 'stock arguments of the tax protestor movement' as being objectively unreasonable...At least two of the arguments in question do not seem to be ‘objectively unreasonable' and have not been adequately addressed by the courts (Oring and Hampton, 1994).

• Alternative tools for judges and lawyers.

Judicially enforceable settlement agreements are important tools to resolve pending litigation. As a result, it is imperative that lawyers and judges be aware of the alternatives available to them... (Denlow, 2003: 17).

Finally, as with any expository writing, the article finishes with a conclusion. This section reviews salient arguments, the main points made in each of the sections in the article. In addition, optionally, a series of recommendations for future courts and policy makers are made. These are typically signaled by deontic modal verbs such as ‘should' and ‘must':

The court should take the earliest opportunity to replace or at least clarify Bess (Donley, et. al., 2002: 337).

If we are serious about ending the plague of handgun violence, localities must seize the initiative... (Thomas, 1999).
Like Supreme Court opinions, law review articles are subject to certain limitations and constraints imposed by the legal discourse community. Some of the limitations and constraints, such as those concerning language, materials, and reasoning, are common to both discourse genres. For example, as expected, the legal discourse community accepts only certain legal terminology when a legal issue is being discussed. Tiersma (1999: 51) reminds us that, “like others in society, lawyers use language to set themselves apart from the mass of the population and to create group cohesion.” Similarly, only certain legal materials, specifically the Constitution, statutory law, precedent and certain legal principles and doctrines, are considered acceptable when developing a legal argument, whether doing so in a judicial opinion, a law review article, or in a court of law.

In addition, as was seen with Supreme Court opinions, the legal discourse community expects the well-known IRAC method of legal analysis to be followed when presenting any legal argument. Secondly, only certain modes of reasoning, known in legal language as ‘tests’, can be employed. The four primary tests, reasoning by analogy, balancing of factors tests, judicial tests, and public policy arguments, were briefly discussed in 1.2.2. Nevertheless, while there are many similarities between law review articles and judicial opinions regarding constraints on allowable contributions, they do, in fact, exhibit certain differences, mainly concerning style.
Law review articles are expository, and, usually, persuasive pieces of writing, but they are not operative as they are not legally enforceable. In addition, they are both analytical and predictive, as they not only examine a recent court decision, but also aim to predict its likely impact on future court decisions, on public policy, and on society in general.

Moreover, according to Samuelson (1984: 149) good expository legal writing should be “flawlessly clear, lucid, and enlightening.” Though she does not advocate a formulaic approach to legal writing, she does propose six rules, most of which could be applied to any expository writing:

1. Have a point.
2. Get to the point.
3. Adopt a structure for the whole analysis that will allow for the facts, court analysis, and policies to be integrated into the body of the argument.
4. Break the analysis up into component parts and develop them separately.
5. Adopt a measured tone.
6. Be concrete and simplify whenever possible.

However, unlike teachers of expository writing in many other fields, Samuelson (1984) especially elaborates on point three, in which she warns against adopting an artificial, formulaic structure such as the following: Introduction, Background, Facts, Court Decisions, Analysis, Policy, and Conclusion. In her opinion, such a rigid structure could lead writers to tarry in getting to their
point, require excessive repetition to ensure cohesion, and dissipate the main argument. Instead, she advocates integration. This advice notwithstanding, analysis of the corpus suggests that a law review article does, in fact, generally conform to a clear generic structure which can only be modified within certain limitations.
1.3 The relationship between genre and hedging

The discussion so far in this chapter has centered on the concept of genre, and the following chapter will focus on hedging. However, though linguistic concepts can often be separated out for theoretical discussion, the fact remains that, in use, they do not ordinarily exist in a vacuum. There is often, necessarily, a degree of interplay between concepts. This section will explore the interplay between hedging and genre with a view to providing a springboard for a discussion of hedging in more depth.

According to Halliday and Hasan (1985) genre is defined by certain obligatory elements or stages in text structure; nevertheless, optional elements do not occur entirely randomly, and that is why it is possible to state a ‘structure potential’ for a genre. Hedging is one such optional element which does not appear to occur completely by chance, but rather somewhat predictably depending on the discourse genre in question. This provides a sound rationale for describing the lexico-grammatical signals, strategies and functions of hedging at the level of genre.

It has been argued that the school of genre analysis whose origin, philosophy and objectives best relate to this study is the ESP School. ESP genre analysis has been invaluable in identifying linguistic features to provide evidence-based knowledge on teaching content. However genre analysis is not without its limits. Bhatia asks, for example:
How do these linguistic features realize in social realities in a particular field of study or profession? Why do users use these features and not others? Does the use of these features represent specific conventions on a particular genre, and if they do, what happens if some practitioners take liberties with these conventions? (1993: 18).

It would appear that practitioners often ‘take liberties with conventions’, that is, they exploit the genre by deviating from and even violating some of the community norms set out for a particular genre, in order to achieve certain private goals or ‘personal intentions’ (Bhatia, 1993: 13). Harkening back to Mauranen’s (1997) distinction between macro and micro-level motivations for hedging, in this study it is postulated that hedging is one linguistic resource used by expert members to exploit a genre with a view to fulfilling communicative functions which are acceptable to the discourse community at the macro-level while also meeting certain micro-level requirements.

These specific micro-level intentions have certain limitations, however; members of a discourse community must conform to certain standards. Nevertheless, as Bhatia points out, “it is possible for a specialist to exploit the rules and conventions of a genre in order to achieve special effects or private intentions, as it were, but s/he cannot break away from such constraints completely without being noticeably odd” (1993: 14). As a result, there is room for a certain amount of creativity within a genre, particularly by those who best understand the conventions governing the genre. However, it is not surprising
that even to achieve private intentions, hedging tends to follow certain predictable patterns.

Nevertheless, in order to constitute a hedge, a lexi-grammatical item must be interpreted as such. As Langlotz explains, deviating from, playing with and violating the discourse community’s expectations for a particular genre can “create semantic effects that force the interpreter to deviate from the default categorization of linguistic cues to invest mental energy in their deep processing” (2009: 217). In order to process a hedge, reader and writer must call upon shared background knowledge or schema⁸ comprising both knowledge of lexis and grammar as well as pragmatic knowledge about language and its relationship with context. They must also engage a shared schema comprising extra-linguistic factors such as perception and world knowledge. Swales (1990) would term the former text-based schemata as it comprises prior knowledge of text genres, and the latter content-based schemata as it is characterized by assumed knowledge of the topic or field.

However, precisely due to a possible lack of shared schemata, including both grammar and pragmatic background knowledge, non-native students embarking on an LL.M., may be at a disadvantage regarding both the interpretation and production of hedges in legal discourse genres. These

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⁸ Schemas are hypothetical mental structures which constitute “frameworks created through experience with people, objects and events in the world, which on their part impose structure on new experiences” (Carstens, 2009: 39).
students, schooled in the traditions of communities of practice typical of other legal cultures, may find it challenging to engage in the discourse practices associated with the U.S. common law culture. This may seriously hinder their ability to meet their target discourse community’s macro-level expectations regarding legal genres as well as understand specific, micro-level intentions inherit in such genres. Thus, to ensure non-native students’ success on post-graduate law course, pedagogical interventions may be necessary. It is hoped that information gathered from the present study can be used to design such interventions. The topic of pedagogy will be returned to at the end of the next chapter.
CHAPTER 2:
THE CONCEPT OF HEDGING
This chapter, which provides an overview of the concept of ‘hedging’, comprises the second of two chapters which together form the Theoretical Framework. This chapter is divided into four parts, the first, 2.1, describing hedging in general terms, the second 2.2 focusing on three key elements in the study of hedging, the third 2.3, turning to hedging in legal discourse, and the fourth, 2.4, addressing the pedagogical applications of studies on hedging. More specifically, 2.1 begins by outlining how ‘hedging’ was originally used to refer to a purely semantic phenomenon and then moves on to describe how the concept has been extended in pragmatics and discourse analysis and is now often linked to such phenomena as epistemic modality, metadiscourse, stance, politeness and vagueness. It concludes by looking at socio-cognitive notions that have been incorporated into the understanding of hedging.

Section 2.2 discusses three key elements which are necessary to clarify for the study of hedging. Thus it begins with classifications of lexico-grammatical items used in hedging, and moves on to hedging functions and hedging strategies. The discussion of these elements are oriented to reflect their relationship to the current study.

Section 2.3 takes a more specific approach, analyzing hedging in legal discourse. Previous studies of hedging in legal discourse are first outlined, and then lexico-grammatical items used as hedges in legal discourse are
discussed. Examples of hedging strategies as well as hedging functions at work in legal discourse are described.

As the current study situates itself in the Swalesean (1990) and Bhatian (1993) ESP School tradition, the final section of the chapter, 2.4, turns its attention to pedagogical applications. This part argues that hedging competence can be considered part of the wider pragmatic competence that non-native students of law need to develop in order to be successful at their studies. In addition, the section outlines pedagogical interventions used to develop hedging competence.
2.1 A general overview of hedging as a linguistic phenomenon

This section aims to give an overview of hedging as a linguistic phenomenon. It begins with the origin of the term as it is used in linguistics, and then traces changing perceptions of the phenomenon due to a shift in emphasis from lexico-grammatical forms to pragmatic function and cognitive interactional principles. In addition, this section addresses hedging realizations, strategies and functions which are later used as a basis for the current study on legal genres.

2.1.1 Hedging as a semantic phenomenon

In a similar fashion to the development of the concept of ‘genre’ outlined in the previous chapter, the concept of ‘hedging’ has evolved alongside linguists’ perception of language over the past 40 years. An early focus was on how lexico-grammatical forms can be used to nuance an utterance in order to better convey human perception of reality. Thus, Lakoff, in his landmark article *Hedges: a study in meaning criteria and the logic of fuzzy concepts*, explored how language can be used “to make things fuzzier or less fuzzy” (1973: 471) marking the first time ‘hedging’ was used as a linguistically oriented technical term.⁹

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⁹ Lakoff did this by applying Zadeh’s (1965) Fuzzy Set Theory to the fields of logic and semantics. Though Zahdeh’s theory was developed within the field of mathematics, it has since been applied to other disciplines including linguistics.
In essence, Lakoff was exploring a novel approach to semantic categorization which has often been cited as the key to humans’ semantic ability, or their ability to attribute meaning to objects around them. Lakoff was seeking an alternative to classical categorization which had largely been unquestioned since first being proposed by Aristotle in his *Metaphysics*.

Classical categorization assumes that categories have clear boundaries, and to be a member of a specific category an object must possess all the necessary and sufficient features which define that category. An object either possesses a feature or it does not. It either belongs to a category or it does not. Classical categorization does not admit ambiguities, members which belong to a category ‘to a certain extent’ or ‘in a certain way’. All category members must have equal status; there is no degree of category membership, no fuzziness (Taylor, 1995: 22-23). However, several challenges had been identified with categorization-based theories, not least of which is how to treat items that do not fit neatly in one category. Thus, by the middle of the 20th century, classical categorization began to be questioned.

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10 Categories can offer a simple and efficient way of hypothesising how humans store and generalize knowledge about the world. “Knowledge about the world is stored in a set of discrete category representations, each encoding or providing access to information about the properties that characterize members of the class. New items are assigned to stored categories through a process that is sensitive to the similarity between the item and the stored representations; and once the item has been categorized, it is attributed the properties known to typify the category” (Rogers and McClelland, 2011: 88).
One notable thinker who came to disagree with classical categorization was Wittgenstein who, upon consideration of the distinct lexical items grouped together under the category ‘game’, deduced that a category is not structured according to shared defining features, but rather according to “a complicated network of similarities overlapping and criss-crossing” (1953: 31). Exploring the connection between such items as ‘card games’, ‘ball games’ and ‘ring-a-ring-of roses’, and contemplating such factors as amusement, skill, luck and competition in each of the ‘games’ under consideration, Wittgenstein could not find any necessary and sufficient features common to them all. He reasoned that they resembled each other in much the same ways various members of a family might resemble each other. Perhaps two members of the family have the same build, but not the same temperament while two others may share temperament and hair color, but not the same build. Thus Wittgenstein characterized the similarities seen between group members as ‘family resemblances’. Wittgenstein’s insights influenced many researchers who came after him including Lakoff. Other researchers who were heavily influenced by Wittgenstein’s insights were Labov and Rosch, both of whom were instrumental in invalidating the idea that categories are clear-cut.

Labov (1973), like Wittgenstein, did not believe categories to have clear boundaries, and he considered how the ambiguities of language could be investigated empirically. To that end, he first showed participants line drawings of different household receptacles such as cups, mugs, bowls and vases, and
asked them to name the objects. He then asked participants to imagine the same household receptacles in different situations, filled with different things such as coffee or mashed potatoes. When the participants had to classify the receptacles again, Labov found the category boundaries became fuzzy.

None of the categories could be well categorized in terms of necessary and sufficient features, and no single attribute was essential to define a category. To be a ‘cup’ a receptacle did not need a handle or a saucer. In addition, the receptacles were categorized not only in terms of size and shape or other tangible features as if they were isolated entities, but in terms of function, and context (Mairol Uson et al 2006:250). For example, what had previously been labelled a cup was deemed a bowl by many of the participants if it held mashed potatoes.

Like Labov, Rosch believed that categories are not clear-cut and defined by a set of formal, necessary and sufficient features as suggested by classical categorization. Rather, Rosch suggested that categories can be viewed in terms of prototypes, or “the clearest cases of category membership defined operationally by people’s judgments of goodness of membership in the category” (1978: 37).\footnote{Rosch (1978) cautions that prototypes should not been understood as a specific category member or mental structure as that would precisely undermine Wittgenstein.} That is made possible because “subjects overwhelmingly agree in their judgments of how good an example or clear a
case members are of a category, even for categories about whose boundaries they disagree” (1978:37).

For example when Rosch asked people to rate various members of the category ‘bird’ according to how typical or good they were as examples of birds, robins were systematically rated quite high, while penguins and ostriches were quite low (1973). The member of a category that is considered more prototypical shares more common attributes with other members of the category, while sharing fewer attributes in common with members of contrasting categories (Rosch, 1978). Therefore, robins are more prototypical of the category ‘bird’ because they share more attributes with other members of the category including size, shape, habitat, and importantly the ability to fly, than a penguin does.

Citing Rosch’s example of ‘birdiness’, Lakoff surmised that “category membership is not simply a yes-no matter, but rather a matter of degree” (1973: 460). In his landmark article, Lakoff suggested that in natural language use, membership of a lexical item to a specific category might be graded. While logicians had engaged “in the convenient fiction” of all or nothing category membership leading to sentences being either true or false, or nonsensical, he argued that sentences were “neither true, nor false, but rather

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12 Interestingly it was Rosch in 1971 who first suggested a hierarchy of ‘birdiness’, in an unpublished discussion of degree of category membership. This is cited as Heider, 1971 in Lakoff (1973).
true/false to a certain extent, or true in certain aspects and false in other aspects” (Lakoff 1973: 471).

Therefore, Lakoff (1973) suggested that to accommodate degree of category membership natural language makes use of certain linguistic mechanisms, hedges being a prime example. To illustrate his point, Lakoff analyzed a small number of lexical items which he termed hedges, including ‘par excellence’, and ‘strictly speaking’ among others, to illustrate how their addition to an utterance can alter semantic meaning in order to cope with the fact that category membership is not an absolute.

‘Par excellence’, for example, “requires the highest degree of category membership” (Lakoff, 1973: 473); thus it picks out the most representative member of a category. We can say, for example, ‘A robin is a bird, par excellence’, but ‘A penguin is a bird, par excellence’ sounds odd since a penguin is not the most representative exemplar of the category.

In contrast, ‘strictly speaking’ “shows the need for distinguishing between important or primary properties on the one hand and secondary properties on the other” (Lakoff, 1973: 475). ‘Strictly speaking’, thus, can limit members of a category. We can say ‘Strictly speaking, a bat is not a bird’, although a bat

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13 Semantic meaning is distinguished from pragmatic meaning. Semantic meaning refers to “sentence meaning and word meaning” without taking into consideration context while pragmatic meaning is “utterance meaning” bearing in mind context (Griffiths, 2006: 6).
and a bird do in fact share some common attributes. Both animals can fly, but of course bats are mammals and have an attribute, namely fur, which no member of the bird category can possess. These are but two examples of how, by indicating degree of category membership, hedging helps humans convey the fuzziness of language which is a closer approximation to their reality than the closed categories suggested by classical categorization.

In addition to ‘par excellence’ and ‘strictly speaking’, Lakoff found that there are other central lexico-grammatical items which can modify the meaning of an utterance in order to account for fuzziness between category boundaries. He offered the first list of “hedges and related phenomena” (1973:472) which can be seen in the table below.

Nevertheless, it is not within the scope of the present study to dwell on how individual lexico-grammatical items can alter semantic meaning, but rather to illustrate one step in the evolution of the concept of hedging. Lakoff cautioned that the study of hedging was just beginning in his landmark article, and indeed his and others’ early studies reflected the fact that semanticists and logicians were focused almost entirely on defining a linguistic resource used to clarify the idea or conceptualization created in our minds by a particular word or phrase. Hedging was only being considered from the point of view of the addressee, thus restricting analysis to semantic meaning.
Chapter 2: The Concept of Hedging

<table>
<thead>
<tr>
<th>Sort of</th>
<th>In a real sense</th>
</tr>
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<tbody>
<tr>
<td>Kind of</td>
<td>In an important sense</td>
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<tr>
<td>Loosely speaking</td>
<td>In a way</td>
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<tr>
<td>More or less</td>
<td>Mutatis mutandis</td>
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<td>On the ____ side (tall, fat, etc.)</td>
<td>In a manner of speaking</td>
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<td>Roughly</td>
<td>Details aside</td>
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<tr>
<td>Pretty (much)</td>
<td>So to say</td>
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<td>Relatively</td>
<td>A veritable</td>
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<tr>
<td>Somewhat</td>
<td>A true</td>
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<tr>
<td>Rather</td>
<td>A regular</td>
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<tr>
<td>Mostly</td>
<td>A real</td>
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<tr>
<td>Technically</td>
<td>Virtually</td>
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<tr>
<td>Strictly speaking</td>
<td>All but technically</td>
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<td>Essentially</td>
<td>Practically</td>
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<td>In essence</td>
<td>All but a</td>
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<tr>
<td>Basically</td>
<td>Anything but a</td>
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<td>Principally</td>
<td>A self-styled</td>
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<td>Particularly</td>
<td>Nominally</td>
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<tr>
<td>Par excellence</td>
<td>He calls himself a</td>
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<tr>
<td>Largely</td>
<td>In name only</td>
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<td>For the most part</td>
<td>Actually</td>
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<td>Very</td>
<td>Really</td>
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<tr>
<td>Especially</td>
<td>(He as much as…)</td>
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<td>Exceptionally</td>
<td>-like</td>
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<td>Quintessential(ly)</td>
<td>-ish</td>
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<tr>
<td>Literally</td>
<td>Can be looked upon as</td>
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<tr>
<td>Often</td>
<td>Can be viewed as</td>
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<td>More of a ____ than anything else</td>
<td>Pseudo-</td>
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<tr>
<td>Almost</td>
<td>Crypto-</td>
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<tr>
<td>Typically/typical</td>
<td>(He’s) another (Caruso/Lincoln/,,,)</td>
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<td>As it were</td>
<td>_____ is the _____ of _____ (e.g.,</td>
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<td>In a sense</td>
<td>America is the Roman Empire of</td>
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<td>In one sense</td>
<td>the modern worlds. Chomsky is</td>
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<td></td>
<td>the DeGaulle of Linguistics, etc.)</td>
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Figure 2.1 Lakoff’s ‘hedges and related phenomena’ (1973:472)

However, as views on language evolved, discourse began to be seen as interactive in nature, and the relationship between both interlocutors, the addresser and the addressee, began to be analyzed. Linguists became interested in how hedging not only affects semantic, but also pragmatic...
meaning. The relationship between function and structure became more closely examined. As a consequence the concept of hedging was further developed in pragmatics and discourse analysis to reflect its use within the context of social communication. This point will be developed in the following section.
2.1.2 Hedging as a pragmatic phenomenon

In an attempt to reflect the interpersonal nature of language, and provide a comprehensive explanation of both the deployment and reception of hedged propositions by language users, hedging has often been treated not in isolation, but as part of other phenomena (Namsaraev, 1997; Markkanen and Schröder, 1997). Thus hedging is often linked to epistemic modality, metadiscourse, stance, politeness and vagueness.

Epistemic modality, which expresses epistemic meaning, is the first concept hedging is often linked to. Declerck explained that there is “‘specified epistemic’ meaning when either knowledge or a degree of (un)certainty is expressed about whether there {is/was/has been/will be} actualization of a situation in the factual world [as opposed to a possible, or modal world] or in the expected future extension of it” (2011: 36). Epistemic meaning can be expressed in correlation to a spectrum of values on an epistemic scale ranging from completely certain to completely uncertain. For example, ‘John is driving home’ expresses certainty that the situation is unfolding in the factual world, while ‘John may be driving home’ expresses a degree of uncertainty as to whether the utterance is in fact true. Here the epistemic modal verb ‘may’ is used to qualify how committed the speaker is to the truth of the utterance.\(^\text{14}\)

\(^{14}\) The expression of epistemic meaning is often linked to modal auxiliaries, but Declerck (2011: 22) cautions that this is a reductionist and misleading view of the phenomenon. However, the modal auxiliary ‘may’ is useful in illustrating the concept at hand for our purposes.
Lyons explained that “any utterance in which the speaker explicitly qualifies his commitment to the truth of the proposition expressed by the sentence he utters is an epistemically modal or modalised sentence” (1977: 797). Epistemic modality, then, has to do with the expression of doubts, certainties or guesses regarding whether a statement is true or false. The use of hedges, whose job it is to “make things fuzzier” (Lakoff, 1973: 471) implies that the writer is less than fully committed to the certainty of an utterance. Hedges have been related to epistemic modality because they can express commitment or lack thereof to the truth value of a proposition (Markkanen and Schröder, 1997; Finegan 2010). The following example, which Hyland offers from Biology can illustrate this:

Our results suggest that rapid freeze and thaw rates during artificial experiments in the laboratory may cause artifactual formation of embolism. Such experiments may not quantitatively represent the amount of embolism that is formed during winter freezing in nature. In the chaparral at least, low temperature episodes usually result in gradual freeze-thaw events (2005b: 179).

It would appear in the above example that the researchers, through the use of ‘suggest’ or ‘may’, for example, wish to withhold complete commitment to their central thesis that “rapid freeze and thaw rates during laboratory experiments cause formation of embolism”.  

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15 Other linguistic items can serve to express epistemic modality, as well as ‘hedge’ an utterance, in addition to modal auxiliaries. In this example, the verb ‘suggest’ fulfills that function. Nevertheless other devices which are said to express epistemic modality, such as backshifting of verbs, is not considered hedging by Salager-Meyer (1997) or Hyland (1996a).
Both Hyland (2005b) and Finegan (2010) appear to agree that hedges may be subtle rhetorical devices, the former suggesting that they allow the writer to present a claim as opinion rather than fact, thus affording him some protection from counter claims, and the latter arguing that hedges are aimed at persuasion. In Hyland’s (2005b:179) example seen above, it could be said that the researchers are aiming at gently persuading the larger scientific community of their claim regarding the formation of embolism.

In addition to epistemic modality, Hyland (2005a; 2005b; 2009) has often included hedging under the umbrella term of metadiscourse. In his model, which he recognizes overlaps with other views of language which emphasize the interpersonal, Hyland defines metadiscourse as “a cover term for the self-reflective expressions used to negotiate interactional meanings in a text, assisting the writer (or speaker) to express a viewpoint and to engage with readers as members of a particular community” (2005a: 37). From this viewpoint, the aim of withholding complete commitment to a proposition is not just to protect oneself or save face, but rather to recognize alternative viewpoints and open a “discursive space” in which these viewpoints can be put forth (Hyland 2005b: 179; Hyland 2009: 75). Hedges mark statements as provisional, thus readers are invited to participate in their ratification. This allows respect for other viewpoints to be expressed.

For a full discussion of classification of hedges, see section 2.3 below. For a full discussion of types of modalizers. See Declerck (2011, 28-33).
Finally, Hyland (2005b; 2009) has also often referred to hedging under the cover term of stance. While ‘stance’ is often coupled with ‘engagement’, Hyland (2005b) distinguishes the two terms by explaining that the latter refers to how the writer acknowledges and connects to the reader ultimately guiding the reader to an interpretation. By contrast, he explains that stance involves positioning, or adopting a point of view in relation to both the issues discussed in the text and to others who hold similar or different points of view. It refers to the writer’s “judgements, feelings or viewpoint about something” (2005b: 174) and relates to some standard or common value system held by a discourse community and influenced by different “epistemological assumptions and permissible criteria of justification” common to certain cultural or institutional contexts. Stance serves as a textual voice and allows writers to present themselves as either fully committed to or uninvolved in an argument. While stance can be conveyed in a variety of ways, Hyland contends that hedges appear to dominate in academic discourse (2009: 78).

Similarly, White (2003) sees stance and attitude as fundamentally social and contends that when a speaker or writer takes a stand, he is doing so as a way to engage with socially-determined value positions. Harking back to Bakhtin (1981), White (2003) sees written and spoken verbal communication as dialogic, meaning all communication refers back to something written or said before, and at the same time anticipates responses of actual, potential or imagined speakers. He proposes two categories of rhetorical functionality; if
the use of a hedge is dialogically expansive, it entertains dialogically alternative positions while if it is dialogically contractive, it acts to challenge, fend off or restrict the scope of other positions (2003: 260). A dialogically expansive hedge can be seen in the example that Hyland took from Biology:

Our results suggest that rapid freeze and thaw rates during artificial experiments in the laboratory may cause artifactual formation of embolism (2005b: 179).

The hedges ‘suggest’ and ‘may’ imply that the researchers are perhaps open to other suggestions or alternatives to the claim they put forward.

By contrast, a dialogically contractive hedge is observed later in the same example:

In the chaparral at least, low temperature episodes usually result in gradual freeze-thaw events (2005b: 179).

‘At least’ narrows the context in which low temperature episodes result in gradual freeze-thaw events, and ‘usually’ narrows the frequency, both of which serve to fend off any future challenges from researchers undertaking the same or similar experiments.

Other phenomena cut across the concept of hedging as well, one such phenomenon being politeness, or “the management of interpersonal relationships: the use of language to promote, maintain, or threaten harmonious relations” (Spencer-Oatey, 2000:3). Brown and Levinson’s theory
of politeness, which was first suggested in the 1970’s but remains one of the most influential theories in the field, centers on the concept of ‘face’, or a person’s “public self-image” (1987: 32).\textsuperscript{16} Both participants in social interaction, both addressers and addressees, have ‘face’, and share the same basic face wants and needs. Therefore it is normally in the interest of both to cooperate in order to maintain each other's face and promote harmonious relations (Brown and Levinson 1987: 61-62).

Hedging can serve to help the participants promote and maintain face, as well as minimize the threat posed by a speech act which has the potential to make either the addresser or the addressee uncomfortable. One such speech act could be making a claim in a scientific research article. This has the potential to make the addresser uncomfortable in case his claims are challenged, and the addressee can be made uncomfortable if he feels forced into accepting certain claims without being able to exercise a degree of discretion based on scientific skepticism.

Face can be saved through the use of hedging. If an addresser hedges a proposition, he marks it as provisional or not completely certain, thus allowing the addressee time to acknowledge and agree to it if he so wishes (Varttala,

\textsuperscript{16} The term ‘face’ derives from earlier work on politeness by Goffman (1967) and from the English idiom ‘to lose face’ (Brown and Levinson, 1987: 61).
2001: 72). This can be illustrated by returning to Hyland's (2005b) example from Biology:

Our results suggest that rapid freeze and thaw rates during artificial experiments in the laboratory may cause artifactual formation of embolism (2005b: 179).

This claim could have been left un-hedged, and expressed as follows:

Our results show that rapid freeze and thaw rates during artificial experiments in the laboratory cause artifactual formation of embolism (2005b: 179).

Such a strong claim could lead to criticism and conflict between the addressee, in this case the author of the scientific article, and the addressees: peers and experts in the field who will read the article. This could lead to the addressees not only questioning the claim itself, but also the reputation of the one making it, resulting in the loss of face.

Brown and Levinson (1987) further suggest that ‘face’ can be either negative or positive. Positive face relates to a positive self-image and the desire that this self-image be approved of. Thus, it is in the interest of the addressee, the writer of the scientific article the example above was taken from, to hedge his claim in order to promote positive face. Negative face, however, refers to freedom of action. If a claim is left un-hedged, as in the rewritten example from the article on Biology, and demonstrates a high degree of certainty, then the addressee’s negative face is threatened. He is forced to accept the claim and his freedom to interpret it is impeded.
A final phenomenon linked to hedging is vagueness (Channell, 1994; Markkanen and Schröder, 1997; Fraser 2010; Overstreet, 2011), which includes “expressions that denote the impreciseness of quantity, quality or identity” (Markkanen and Schröder, 1997: 7). Fraser (2010: 26) explains that vagueness occurs when the information that a reader (or listener) receives is less precise than would be expected, and, when intentional, can serve a variety of functions. For example, vague statements are used when a more precise one might offend the reader or listener, as in this example from Fetzer, taken from spoken political discourse, which uses the hedge ‘sort of’:

But so when he says that there will be no further cuts, Michael Portillo says there will be not further cuts, he is erm sort of whistling in the wind (2010: 64).

In addition, vague language is used when a writer/speaker wishes to disguise the fact they do not know the precise details. Fraser (2010: 26) suggests, for example, that in answer to the question “Where did he go?” a respondent who did not know the exact details could answer: “He visited Japan, Hong Kong, and so on”. Here ‘and so on’ is purposefully vague.

In summary, Lakoff had cautioned early on that “a far more sophisticated apparatus” than his would be needed to effectively study hedges (1973: 483). Perhaps in response to that call, the concept of hedging was extended to other areas including epistemic modality, metadiscourse, stance, politeness and vagueness. However, as the concept of hedging was extended to these other
areas, its scope widened from Lakoff’s original use, and, in the opinion of many, it lost clarity in meaning (Markkanen and Schröder, 1997).

Nevertheless, the extension of the concept of hedging reflected the growing acceptance of the view that there is an interrelationship between language, function and interpersonal relationships. Coupled with this view was an increasing understanding of the importance of context and shared background knowledge in the interpretation of a lexico-grammatical item as a hedge. As a result, the concept began to acquire socio-cognitive aspects which will be addressed in the next section.
2.1.3 Socio-cognitive aspects of hedging

So far, this chapter has addressed hedging from both a semantic and a pragmatic perspective. However, it is not easy to draw clear boundaries between the two. For example, Varttala (2001) differentiates between semantic and pragmatic aspects of hedging by asserting that semantically, a hedge expresses the experiential ideational function of language by modifying group membership, truth value, and illocutionary force, which increases or decreases the fuzziness of our conceptualizations of the world. He contends that, pragmatically, hedging fulfils various interpersonal functions in discourse, the main one being linked to politeness.

Nevertheless, if group membership, truth value, and illocutionary force of an utterance is modified to increase fuzziness, surely there must be an ulterior interpersonal motive such as prevention of conflict. Clearly, there is a link between semantic and pragmatic aspects of hedging in terms of functionality.

Many, including Lakoff (1973:494), have pointed out that drawing a distinction between semantics and pragmatics is no mean task with regards to hedging. Channel (1994), for example, cautions against boundary-drawing between semantics and pragmatics, and she suggests that: Semantics + Pragmatics = Meaning. She defines ‘meaning’ as any of a number of propositions which an addressee can derive from an utterance, taking into account two very important factors: context and background knowledge.
Early on, Labov (1973) pointed out the role of context in category classification when he found in his household receptacle experiment that cups, for example, could be re-classified depending on what context they were found in – the coffee-drinking context when filled with coffee, or the food context when filled with mashed potatoes. Lakoff (1973) addressed the role of context in hedging directly when he contended that context affects the truth value of a proposition – whether it is true or very close to true, or false. He explained that “different cultures, sub-cultures, and even individuals may differ as to which criteria for a given predicate are primary and which are secondary” and this may very well be context dependent (1973: 484).

Building on Channel (1994), Clemen concludes that “hedges are determined by context, the colloquial situation and the speaker’s / writer’s intention, plus the background knowledge of the interlocutors” (1997: 237). Kaltenböck et al. add that there has been “an increasing awareness of the close interdependence of hedging and context, in particular how the use of hedges is shaped to a large extent by the expectations and requirements of a particular discourse community” (2010: 3). Similarly, Salager-Meyer highlights the contextual and social aspects of hedging and its role in communication explaining that “it reveals how life in community compels us to modulate, camouflage, mitigate and adapt our language according to the situation we find ourselves involved in” (2000: 176). She argues against purely functional definitions seeing them as ‘reductionist’ in the sense that they neglect the
importance of the mental and psychological nature of the phenomenon of hedging, and deny “the fundamental role played by introspection and knowledge of the cultural context in the process of hedging identification” (2000: 177).

This serves to underscore the idea that hedging is an interactional phenomenon (Markkanen and Schröder, 1997). It is not enough for the addressee to produce an utterance which is hedged. In addition, the addressee must process the hedge as such. To do so, the addressee must share with the addressee a shared knowledge and understanding of lexico-grammatical devices which can be used as hedges, and their use in the given cultural and social context in which the hedge is produced.

To summarize, section 2.1 has provided a historical overview of the concept of hedging, charting its development to reflect linguists’ changing ideas on language, as well as their shift of emphasis from lexico-grammatical form to pragmatic function and cognitive interactional principles. The next section, 2.2, seeks to define three elements which form the basis of the research carried out in the present study: lexico-grammatical realizations of hedges, hedging strategies and hedging functions.
2.2 Key elements in the study of hedging

Section 2.1 provided a historical overview of the concept of hedging from its origin as a linguistic term by Lakoff (1973) to its development to encompass pragmatic and socio-cognitive notions. This section will narrow in scope as it sets out to describe three key considerations which have served as the focus of the research carried out in the present study. Specifically, this section will address lexico-grammatical items which can serve as hedges, pragmatic functions which hedging can fulfill, and rhetorical strategies used to carry out hedging.

2.2.1 Lexico-grammatical items which can serve as hedges

As will be recalled, section 2.1.1, Figure 1, indicated a list of lexico-grammatical items which Lakoff (1973) found could account for fuzziness between category boundaries. While Lakoff’s list is useful, it is limited as it does not attempt to classify the lexico-grammatical items into any meaningful categories. Thus, as the concept of hedging was extended and developed, several attempts at classifying realizations of hedges were made.

However, classifying hedges is not an easy task for several reasons. Firstly, the number of items which could potentially serve as a hedge is limitless. As Clemen explains, “there is no limit to the linguistic expressions that can be considered as hedges…no linguistic items are inherently hedgy but can acquire this quality on the communicative context or co-text” (1997: 6).
In addition, hedging is “a productive linguistic device…[which] can be achieved in an indefinite number of surface forms (Brown and Levison, 1987: 146), meaning that hedges are not always predictable. Hedges simply cannot be described as a closed set of lexical items (Crompton, 1997: 281). Thus, formal classifications, those focusing on form only, run the risk of excluding key members of the set of hedges.

Another problem is that forms which have been identified as hedges can be multi-functional. For example the modal verb ‘may’, which is considered a key epistemic modal (Coates, 1983), can display deontic value in legal texts. Therefore, any classification of hedges must take into account functional in addition to formal criteria. Therefore, simply counting the instances of ‘may’ in a text could entail “the risk of misrepresenting the discourse” (Crompton, 1997: 279) as not all instances of ‘may’ share the same function.

Salager-Meyer advocated a hedging classification that is based on both formal and functional criteria. As she explains,

> I believe that in spite of their undeniable contribution to the field, most studies which have been carried out so far on the topic of hedges have not made enough emphasis upon the fact that hedges are first and foremost the product of a mental attitude which looks for prototypical linguistic forms (such as modals, epistemic verbs, approximators, etc. ) for its realization, but these linguistic forms do not always carry a hedging nuance. Such an ambiguity -- one linguistic form may serve many functions and the same function may be expressed using different forms--
leads to the difficulty of identifying which of these linguistic forms are hedges and which are not (1994: 153).

Thus, Salagar-Meyer was interested in classifying hedging formally by looking for 'prototypical linguistic forms for its realization', as well as functionally by ascertaining 'hedging nuance'. Nevertheless, she cautioned that the task of identifying hedges is not always easy unless the hedge is analyzed in context.

She continued:

Nevertheless, it is my contention that the gap which necessarily exists between the writer’s mental processes (i.e., his/her intentions) and the linguistic realizations employed can be solved to a great extent by carrying out a rigorous contextual analysis (1994: 5).

Salager-Meyer's taxonomy of hedging, which she used to study oral medical discourse, had the following five categories which are summarised below:

1. Shields\textsuperscript{17}: all modal verbs expressing possibility; semi-auxiliaries (appear); probability adverbs (probably, likely) and their derivative adjectives; epistemic verbs (suggest, speculate).

2. Approximators (roughly, somewhat, often).

3. Expressions of the authors' personal doubt and direct involvement such as 'I believe', 'to our knowledge'.

4. Emotionally-charged intensifiers (comment words used to project the authors’ reactions) such as 'extremely difficult/interesting' or 'dishearteningly weak'.

\textsuperscript{17} Shields were considered a pragmatic phenomenon as they introduce fuzziness "in the relationship between the propositional content and the speaker", and approximators were considered a semantic phenomenon as they introduce fuzziness "within the propositional content proper" (Prince et al., 1982: 86).
5. Compound hedges: double hedges (It may suggest that ...), treble hedges (It would seem likely that ...), quadruple hedges (It would seem somewhat unlikely that ...) (1994: 155).

Salager-Meyer’s (1994) taxonomy was criticized for failing to explain the inclusion of ‘emotionally-charged intensifiers’, and for failing to provide a convincing theoretical base for the inclusion of approximators\(^\text{18}\) (Crompton, 1997: 280-81). In fact, Crompton contended that it was inappropriate to identify hedges as individual words and proposed that it was more fruitful to look for “characterisations of hedged propositions” (1997: 284). Hedged propositions would have to pass a ‘simple test’:

> Can the proposition be restated in such a way that it is not changed but that the author’s commitment to it is greater than at present? If “yes” then the proposition is hedged. (The hedges are any language items in the original which would need to be changed to increase commitment.) (1997: 282).

Hedge propositions would then demonstrate one of the following patterns:

1. Sentences with copulas other than be.
2. Sentences with modals used epistemically.
3. Sentences with clauses relating to the probability of the subsequent proposition being true.
4. Sentences containing sentence adverbials which relate to the probability of the proposition being true.
5. Sentences containing reported propositions where the author(s) can be taken to be responsible for any

\(^{18}\) She contended that approximators most closely reflect “what we would call scientific language” (1994: 7) without clearly defining what scientific language is (Crompton, 1997: 281).
tentativeness in the verbal group, or non-use of factive reporting verbs such as “show”, “demonstrate”, “prove”. These fall into two sub-types:

a. where authors explicitly designate themselves as responsible for the proposition being reported;

b. where authors use an impersonal subject but the agent is intended to be understood as themselves.

6. Sentences containing a reported proposition that a hypothesized entity X exists and the author(s) can be taken to be responsible for making the hypothesis. (1997: 284)

The problem with Crompton’s taxonomy in light of the present study, is that it is too unwieldy to be used on any practical basis with current corpus linguistics tools. Though not completely satisfactory, Salager-Meyer pointed the way for a more comprehensive list of formal items which could be considered hedges, classifying such items according to grammatical form:

1. Modal auxiliary verbs such as: ‘may’; ‘might’; ‘can’; ‘could’; ‘would’ and ‘should’.


19 Note that Salager-Meyer (1994, 1997), Crompton (1997) and Hyland (1998c) all refer to their hedging classifications as ‘taxonomies’ though arguably none would adhere to a rigorous application of the term.
4. Approximators of degree, quantity, frequency and time such as: ‘approximately’; ‘roughly’; ‘about’; ‘often’; ‘occasionally’; ‘generally’; ‘usually’; ‘somewhat’; ‘somehow’; ‘a lot of’.

5. Introductory phrases which express the author’s personal doubt and direct involvement such as: ‘I believe’; ‘to our knowledge’; ‘it is our view that’; ‘we feel that’.

6. "If" clauses, such as: ‘if true’; ‘if anything’.

7. Compound hedges which are phrases made up of several hedges. Salager-Meyer indicates that the two most typical forms are: modal verb + lexical verb with hedging content (‘it would appear’); lexical verb + hedging adjective or adverb which reinforces the hedge inherent in the lexical verb (‘it seems reasonable’) (Salager-Meyer, 1997).

Notwithstanding the need to include functional criteria in any classification of hedges, Salager-Meyer’s classification is useful from the standpoint of corpus linguistic methods which the current study adheres to. After all, though he advocates attending to sentence pattern as opposed to individual words, Crompton concedes that “the identification of certain commonly employed words might be a starting point for corpus-based studies of the phenomenon [of hedging]” (1997: 284).

Grabe and Kaplan (1997) suggested a simpler classification of hedges, dividing them into those realized by lexical and modal verbs, and those realized by other word classes including adjectives, adverbs and nouns. They termed the former ‘verbal’ hedges and the latter ‘non-verbal’ hedges. A criticism of Grabe and Kaplan’s (1997) classification is that it is aimed at word-level only, thus excluding any larger syntactic units at phrase or clause level.
such as ‘if clauses’ and introductory phrases making it not only simpler, but also simplistic. However, from the point of view of the current study, Grabe and Kaplan’s (1997) distinction between verbal and non-verbal hedging is useful in that it has allowed for the scope of the study to be narrowed to focus on verbal hedges only which is important given the time and space constraints.

Up to this point, it has been seen that Salager-Meyer’s (1994; 1997) classification is too broad, and Grabe and Kaplan’s (1997) too narrow though both are useful in orienting corpus studies of the phenomenon. Another classification to consider is Hyland’s (1998) which divides hedges into two categories: ‘lexical’ and ‘strategic’. Like Salager-Meyer’s (1994) classification, Hyland’s (1996a, 1996c, 1998) takes into account both formal and functional properties of hedges, and perhaps for that reason has proven to be one of the most popular (Tran and Duong, 2013).

weaknesses, limitations of the model, theory or method used, or inadequate knowledge, writers can qualify commitment by offering a measure of propositional certainty" (1996a: 272). These strategies could be linked to certain lexical realizations.

Firstly, by referring to experimental weaknesses which may compromise the accuracy of their results, or referring to the limitations of a specific model, theory or method, scientists anticipate challenges to the premises or methods by which results were achieved. This is commonly accomplished through failing to guarantee the precision of the results, and through the use of conditionals and if-clauses.

So it is difficult to conclude whether the 100 kDa protein mentioned above is...

If correct, this prediction might explain why previous exhaustive screens have not detected mutants in phytochromes other than phytochrome B.

Finally, by appealing to “limited knowledge”, writers could “distinguish between conditionally true conclusions and speculative possibilities” (Hyland, 1996a: 272). This was often achieved through the use of negative utterances or questions:

It is not known whether such a weak temperature response...

Could such a putative interaction of an aminoacyl-tRDA synthetase with precursor tRNA have a physiological significance?
Therefore, Hyland (1996a) suggested that there are other means of expressing tentativeness which do not fit in the category of lexical hedges, and which can be realized in a wide variety of ways including the use of questions, conditional clauses and contrast markers, as well as a limited range of formulaic phrases. However he cautions that these other means of hedging, due to their wide variety, are not easily quantifiable.

Instead of dwelling on lexical representations of hedging, however, Hyland preferred to focus on the functional properties hedges could demonstrate. In fact, he argued that not only is it impossible to relate particular hedging forms to specific functions, but also that particular forms can be polypragmatic, relating to various pragmatic functions, frequently at the same time (1996a, 1996c). Hedges did not have to carry out only one function at a time, but could be part of a ‘fuzzy set’ with graded membership. “The essential feature of fuzzy-sets is that they allow the gradual transition to membership so cases are not restricted to binary end-points but can range between them, with some examples denoting a greater degree of membership of one category than another” (Hyland, 1996c: 439).

Hyland’s (1996a, 1996c) fuzzy set theory mean that while some examples of hedges could be situated at the core of a category representing a specific function, others could be situated at the periphery between functions, exhibiting attributes which could be associated with different functions. He felt
that this could explain the “vagaries” (1996c:439) of his corpus and account for lack of precision in being able to relate particular lexico-grammatical items with specific functions.

His model took into account four variables which together defined where a hedge was to be situated in a category representing a specific function – whether at the core or the periphery: specification, verification, cooperation and agentivity. Specification relates to how accurately the events or states referred to in a claim are described. Verification refers to acknowledgement of uncertainties about the claim. Cooperation indicates the extent to which the writer seeks to involve the reader in the ratification of the claim.

Finally, agentivity refers to whether the action or state described in the proposition is explicitly associated with the writer. Hyland suggests that to avoid assuming direct personal responsibility for a claim, the writer can conceal himself behind the syntax through use of passives, existential subjects or ‘abstract rhetors’, which attribute claims to the text or data, or non-specific, unnamed rhetors (1996a: 257) which are exemplified by “Some people may think that…” or “Opponents argue that…” (Neff van Aersalaer and Bunce, 2011:71). Hyland’s (1996a; 1996c) “fuzzy set model” of hedging led him to further classify hedges by function into writer-oriented, reader-oriented and content-oriented hedges. These will be taken up again and further explained in 2.2.2, the section on functions of hedges.
Summarizing thus far, in light of the aims of the current study, then, the classifications proposed by Salager-Meyer (1994), Grabe and Kaplan (1997) and above all Hyland (1996a, 1996c), especially his classification of ‘lexical hedges’, are useful in that they all help to pinpoint specific lexico-grammatical items which can be searched for using current corpus tools. As this study is corpus-based, it is practical to delineate potential hedges by their formal properties first to facilitate that endeavor. Functional properties can then be defined by looking at each instance of a potential hedge in context.

The scope of this study is limited to what Hyland (1996a) termed ‘lexical hedges’ both because that would facilitate use of current corpus tools, and because Hyland contends that “hedging is predominantly expressed lexically” (1996a: 260). Yet, as has been seen, categorization of lexical hedges can be quite complex and extensive. With a view to providing a more in-depth account of hedging in the corpus, the scope of the current study has been narrowed even more to focus on only one type of lexical hedging, namely verbal hedging, following on from Grabe and Kaplan (1997). The rest of this section will address modal and lexical verbs in turn.

Modal verbs are polysemous in nature. Nevertheless, they are often divided into two categories according to the meanings they can express: root (or
deontic) modality or epistemic modality.\textsuperscript{20} Coates offers a very clear explanation of this distinction:

Epistemic modality is concerned with the speaker's assumptions or assessment of possibility, and in most cases it indicates the speaker’s confidence or lack of confidence in the truth of the proposition expressed. Root modality encompasses meanings such as permission and obligation, and also possibility and necessity (1995:55).

Hedging clearly falls into the category of epistemic modality when some sort of doubt or lack of commitment is expressed. Coates (1983) argued that ‘may’ and ‘might’ are the principal epistemic modal verbs as they express epistemic possibility.

In addition, modals can often express both deontic and epistemic meaning depending on the context. For example, Coates (1983) asserts that ‘would’ often expresses epistemic meaning as it is frequently used to express a hypothetical prediction and can be paraphrased ‘I expect given unlikely conditions’. Moreover, ‘should’ and ‘ought’ are primarily used to express weak obligation, but can also express ‘tentative assumption based on inference’ though this use is less frequent. When expressing tentative assumption, ‘should’ and ‘ought to’ can be paraphrased ‘I assume/probably’ (Coates, 1983). Finally, while the primary meaning of ‘could’ is ‘root possibility’ (Coates, 1983), it can also express tentative possibility on occasion, and so is

\textsuperscript{20} Some such as von Wright (1951) argue for a third category (dynamic modality), but this is rejected by others (Biber et al., 1999; Bybee and Fleischman, 1995).
sometimes used as an epistemic modal. Thus, in this study ‘may’, ‘might’, ‘would’, ‘should’, ‘ought’ and ‘could’ are considered the principle modal hedges.

Turning to lexical verbs, Hyland (1998c) suggested that notions about epistemic modality could be applied to lexical verbs as well as modal verbs. He contended that “despite the tendency of linguists to focus on modal verbs as exponents of epistemic modality (Coates, 1983; Palmer, 1990), the modals are part of a much wider system” (1998c: 45). Palmer had suggested that exponents of epistemic modality could be classified into different categories according to how they help the writer express commitment or lack thereof to the truth value of a proposition (1986: 51): speculative, deductive and assumptive. Speculative exponents express conjectures about a subject without firm evidence, deductive exponents express inferences from observable data and assumptive exponents express inferences from what is generally known.

Hyland (1998c) followed on Palmer (1986; 1990; 2001) but instead of three categories, he proposed four. Palmer had asserted that the deductive and assumptive categories could be subsumed into one category in systems that include evidential markers of report and sensation (Palmer 2001: 29). As English has markers of report in the form of reporting verbs such as ‘argue’, ‘contend’ and ‘suggest’, as well as markers of sensation in the form of sensorial verbs such as ‘seem’ or ‘appear’, Hyland (1998c) signals four
categories of lexical verbs: speculative, deductive, quotative (comprising reporting verbs) and sensorial. While these four verb categories will be addressed again in more depth in 6.1 along with illustrative examples taken from this study’s corpus, a brief explanation follows.

The ‘speculative’ category contains verbs such as ‘believe’ and ‘think’ which can help to indicate that a writer is presenting a subjective opinion, as opposed to objective fact. ‘Deductive’ lexical verbs help to indicate that a deductive conclusion is being presented, as in the case of the verb ‘conclude’ or ‘assume’. ‘Quotative’ verbs such as ‘suggest’ serve to indicate that second-hand information is being presented. Finally, ‘sensorial’ lexical verbs such as ‘seem’ can indicate that evidence is based on the writer’s senses.

Some verbs can appear in both the speculative and quotative categories. That is because some verbs can potentially serve as judgmental or evidential hedges depending on how they are used. For example ‘suggest’ and ‘argue’ can be speculative if used with a first person pronoun as in ‘I suggest’ or ‘I argue’, and they can be quotative if used with a third party subject as in ‘Hyland suggests’ or ‘Bhatia argues’.

In addition, Hyland points out that the speculative and deductive categories concern “epistemic judgments of the writer” while the quotative and sensorial categories involve ‘the nature of the evidence the writer employs to support a
claim” (1998c: 120). These two categories are useful in helping to pinpoint the origin of a claim, whether it arose internally from the writer’s judgment or externally from the evidence. Therefore, speculative and deductive lexical verbs fall under the category of judgmental hedges, while quotative and sensorial lexical verbs can be considered evidential hedges.

To summarize, this section has provided an overview of classifications of lexical realizations of hedges with a view to signaling those that are of most practical use to the present corpus-based study. It was found that both formal and functional classifications of hedges are necessary in order to understand how hedges are used in discourse. However, as this study is corpus based, the two must be separated to better apply current corpus tools such as WordSmith version 6.0.

Thus formal classifications, in particular Hyland’s (1996a) classification of lexical hedges as well as Coates (1983) discussion of modal verbs, could be particularly useful in pinpointing items which should be searched for using current corpus tools. In addition, Hyland’s (1998c) classification of epistemic lexical verbs would also be of great value when analyzing the data produced by the corpus tools. To better understand the use of hedging in the discourse, however, each instance would have to be analyzed in context (Salager-Meyer, 1994).
Now that a discussion of realizations of hedges has been provided, it is time to turn our attention to the different functions which a hedge can fulfill and the discourse strategies commonly used in hedging.
2.2.2 Hedging functions and strategies

The overarching aim of hedging in discourse is to achieve certain communicative functions. In a similar fashion as genre analysis progressed from surface analysis of form to a deeper analysis of the relationship between form and function, so too did hedging. Functional definitions of the phenomenon began to develop. This section offers a general discussion of the main functions hedging can fulfil while specific examples taken from legal discourse will be given in section 2.3.4.

Salagar-Meyer proposed four main hedging functions, the first and most important being “to minimize the ‘threat-to-face’ lurking behind every act of communication” (1997: 106). By this she means that authors tend to tone down their statements in order to avoid personal accountability and consequently ward off embarrassing opposition, especially in the face of conflictive or contradictory evidence provided by another author.\(^{21}\)

In addition, while some researchers have suggested that hedging can be used when the writer/speaker wishes to disguise the fact that they do not know the precise details (Fraser, 2010), Salager-Meyer argues that hedges are not always used in evasive tactics, but rather may be useful in allowing an author

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\(^{21}\) As seen previously in Section 2.2, Hyland (2005b) agrees that hedges afford some protection from counter claims but appears to contend that this is precisely because hedges allow the writer to present a claim as opinion rather than fact, thus seemingly rejecting the idea that writers are trying to avoid personal accountability.
“to be more precise when reporting findings” (1997: 107). She explains that often hedges express the true level of knowledge and understanding an author has in relation to the results found, and therefore stronger statements would not be justified, especially considering that skepticism, uncertainty and doubt are essential components of modern science.

A third function of hedges is to serve in “positive or negative politeness strategies” (1997: 108). To make a claim is to express an opinion, but until that opinion is generally accepted by the discourse community it is aimed at, hedges allow for authors to assume a certain humility and deference.

Finally, hedging allows an author to conform to an “established writing style” (Salager-Meyer, 1997: 109) which is expected by a particular discourse community. This is due to the fact that a certain degree of hedging has become conventionalized.

Hyland classifies hedges according to three functions. The first type, ‘writer-oriented hedges’ “diminish the author’s presence in the text rather than increase the precision of the claims, toning down the language they use to express their commitment to their research claims” (1998c: 170). These claims afford the writer some protection from those with divergent views and seem to correspond to Salager-Meyer’s (1997) proposal that hedges minimize potentially face-threatening situations.
Chapter 2: The Concept of Hedging

The second type, according to Hyland, consists of ‘accuracy oriented hedges’, which are used to “achieve precision; either by a) marking a departure from an ideal or b) indicating that a proposition is based on plausible reasoning or logical deduction in the absence of full knowledge” (1998c: 163). The latter, especially, seems to correspond to Salager-Meyer's (1997: 107) idea that hedges can aid the writer in expressing his true level of knowledge.

Hyland’s third type, ‘reader-oriented hedges’, “invite readers to participate in a dialogue” (1996c: 446). These hedges permit the addresser to recognize alternative viewpoints and open a “discursive space” in which these viewpoints can be put forth (Hyland 2005b: 179; Hyland 2009: 75).

Namsaraev, in an attempt to distinguish hedging from such linguistic phenomena as modality and the pragmatics of politeness, proposes that the main function of hedging is “the protective transformation of an utterance” (1997: 65). By that he means that hedges protect utterances from anticipated hypothetical negative responses from an addressee, as well as serves to avoid potential conflict which could damage communication. This seems in line with both Salagar-Meyer (1997) and Hyland (2005b).

Mauranen (1997), however, divides hedging functions into two broad categories: epistemic and interpersonal hedging. Thus, hedging can be used to express the nature and uncertainty of knowledge (epistemic hedging), which
harkens back to Salager-Meyer's second function of hedging (1997:107) as well as the previously discussed idea that hedging is used to show commitment or lack thereof to the truth value of a proposition (Markkanen and Schröder, 1997; Finegan 2010). It can, in addition, shield the addressee from, or create, a particular impression in the audience (interpersonal hedging), which appears to be in line with other researchers (Salager-Meyer, 1997; Namsaraev, 1997; Hyland 2005b), and reminds us of White’s (2003) claim that it can be used for persuasion.

It would appear that in addition to epistemic and interpersonal functions, hedging can serve interactional and social purposes as well. Both Hyland (2005b) and White (2003) highlighted its use to open up a dialogue and engage with other viewpoints and established socially-determined value positions.

Though these functional definitions are successful in capturing the pragmatic essence of the phenomenon, they are not without criticism. For example, while Namsaraev (1997) successfully narrows down the function of a hedge to one of a protective nature, he effectively expands the repertoire of devices which could be considered a hedge, admitting that one of his main aims in

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22 This discussion by no means exhausts the list of functions attributed to hedging by different authors, but rather, for the sake of brevity and given the scope of the present study, highlights those which are most relevant. For other suggestions, see, for example, Markkanen and Schröder (1997), Skelton (1997), Varttala (2001), and Wilss (1997).
wishing to clarify the relationship between hedging and other categories such as modality was to rectify the fact that many hedging devices were being overlooked. As he explains,

> Often when a hedging strategy is discussed, only a limited number of the many linguistic devices which in different texts perform hedging functions are mentioned. As a result many hedging devices escape the notice of these researchers or are assigned to other linguistic categories (Namsaraev, 1997: 65).

Indeed, hedging is a multi-faceted phenomenon whose forms are “manifold” (Meyer, 1997: 23).

Another problem with functional definitions is that a form can perform diverse functions (Hyland 2005b), and can operate on different levels of communication at the same time. In fact, there appears to be both macro-level and micro-level motivations for hedging (Mauranen, 1997). The fact that hedging is deemed appropriate for some discourse genres leads to it being expected by certain discourse communities. Because it is expected, it becomes part of a ritual and thus there is a macro-level motivation for hedging. In addition, there is often a more personal, micro-level motivation for hedging such as desire to save face, show tact or appear modest.

Nevertheless, while not without criticism, functional definitions of hedging help us to understand better the motivations behind the phenomenon especially when seen in their wider context. From the point of view of corpus-based
studies, the function of a hedge can be determined through contextual analysis. One aid to contextual analysis, also, is identification of the rhetorical hedging strategy being utilized and which can often be linked to specific function. Hedging strategies as well as the interrelationship between lexical realization, strategy and function will be discussed in the remainder of this section.

Some authors have attempted to clarify the phenomenon of hedging by identifying four strategies used to carry it out (Namsaraev, 1997; Salager-Meyer, 1994). Martin (2003) has further identified lexico-grammatical items linked to specific strategies. One strategy, *indetermination*, adds fuzziness or uncertainty to a proposition by making it less explicit and vaguer in terms of quality or quantity. In addition to adverbs such as possibly and probably, and their corresponding adjectives (‘possible’, ‘probably’) and nouns (‘possibility’, ‘probability’), indetermination can be achieved through the use of: epistemic modals (‘may’, ‘might’, ‘can’); verbs of cognition (‘seem’, ‘appear’); epistemic verbs (‘assume’, ‘suggest’); and vague expressions of frequency, quantity, degree and time (‘roughly’, ‘approximately’, ‘somewhat’). These expressions indicate the writer’s unwillingness to clarify his commitment to the truth of a proposition (Alonso et al., 2012: 52 based on Martin, 2003).

Another strategy, *depersonalization* allows the writer to avoid direct reference by using ‘we’ or ‘the authors’ instead of ‘I’, or using agentless passives and
other impersonal expressions such as ‘it is said’ in order to shift the responsibility from the author to some other entity. It is also achieved through the use of impersonal active constructions in which some non-human entity (such as ‘the results suggest’) which also serve to detach the author from their claims (Alonso et al., 2012: 53 based on Martin, 2003).

Subjectivization is another strategy which consists of using a personal pronoun followed by a verb of cognition (I + think, suppose, assume) to signal that what is being said is personal and subjective, and not necessarily the truth, thus inviting the reader to agree or disagree from a neutral position. Subjectivization can also be achieved through expressions such as ‘to our knowledge’, ‘in our view’, ‘in my experience’ (Alonso et al., 2012: 53 based on Martin, 2003).

The final strategy, camouflage hedging, which was identified by Namsaraev (1997), displaces the focus of the addressee’s attention or negative reaction from the proposition by using such emphatic expressions as ‘really’ or ‘in fact’, ‘actually’, and ‘generally speaking’ (Alonso et al., 2012: 53 based on Martin, 2003). These emphatic expressions can be used in conjunction with a variety of hedges including modal verbs, lexical verbs, adjectives, adverbs and nouns so that the certainty displayed by the emphatic is balanced by the lack of certainty expressed by the hedge: ‘In fact, it may / seems / is likely to be’, for example.
This section has limited itself to a brief discussion of four hedging strategies identified in the literature, as well as specific lexico-grammatical items linked to each strategy. Examples of each strategy from legal discourse will be the focus of section 2.3.3 below. First, however, it is useful to discuss the interrelationship between lexico-grammatical realization, pragmatic function and hedging strategy.

The current study proposes that hedging can be linked to genre. As was seen in 1.13, Halliday and Hasan (1985) indicated that genre is defined by certain obligatory elements as well as other optional elements. These optional elements, hedging being one of them, do not occur entirely randomly, but rather somewhat predictably depending on the genre in question. This study recognizes that while hedging “can be achieved in an indefinite number of surface forms” (Brown and Levison, 1987: 146), nevertheless there are certain “prototypical linguistic forms for its realization” (Salagar-Meyer, 1994: 5) which allow for the phenomenon to be investigated using current corpus tools.

Certain characteristic lexico-grammatical items often serve to carry out specific discourse strategies including subjectivization, depersonalization, indetermination, and camouflage hedging. For example, subjectivization is often achieved through the use of first person subject pronouns in conjunction with an epistemic lexical verb such as ‘I think’ or ‘we believe’ as well as first person possessive pronouns in phrases such as ‘in my opinion’ or ‘our results
suggest’. Indetermination, on the other hand, is more commonly achieved through the use of the epistemic modal verbs ‘might’ or ‘may’ as well as epistemic adjectives such as ‘likely’ or adverbs such as ‘usually’. Depersonalization is commonly accomplished through the use of impersonal constructions, shifting agentivity from the writer to some abstract rhetor, and the use of ‘we’ or ‘the authors’. Finally camouflage hedging is signaled through the use of an emphatic expression in conjunction with an epistemic lexical hedge.

These strategies work to fulfil certain macro- and micro-level pragmatic functions, often fulfilling several functions simultaneously. For example, consider again Hyland’s example from Biology:

**Our results suggest** that rapid freeze and thaw rates during artificial experiments in the laboratory **may** cause artifactual formation of embolism (2005b: 179).

While fulfilling the macro-level function of meeting discourse community expectations concerning the epistemic nature of knowledge, the strategy of indetermination, realized through the use of ‘may’, also fulfils the writer’s more personal, micro-level desire to save face, show tact or appear modest by ensuring his claim does not appear categorical. Similarly, while fulfilling the macro-level function of meeting discourse community expectations that statements be supported with specific examples obtained through use of the scientific method, subjectivization, through ‘our results suggest’ also allows the
writer to achieve the micro-level function of saving face by distancing him from the claim, placing the onus of the claim on the ‘results’.

Finally, it is important to keep in mind that realization of a hedge often responds to the addressee’s personal intention but its interpretation as such ultimately depends on the addressee’s intuition, ability to understand the context in which the hedge was produced, and invocation of shared linguistic background knowledge. That is why, as will be explained further in Methodology, locating and analyzing a potential hedge in its context is essential to determine its true value.

This study postulates that hedging realization, frequency, strategy and function can be defined and described in terms of, above all, communicative functions of a specific genre. Highlighting the significance of communicative function is in line with the Swalsean (1990) ESP school of genre analysis in which the current study is situated. This study looks at two very different legal written genres frequently handled by EALP students, namely Supreme Court opinions and law review articles. These genres were addressed in 1.11 and 1.12 respectively, where it was shown that the two genres had radically different communicative purposes, as the former comes from the juridical sphere, and the latter from the academic sphere. Due to their different communicative purposes, it is fair to suggest that hedging will be realized and used quite differently in the two genres as well. These differences in hedging will be
presented in depth in chapters 4, 5 and 6, but first a general overview of hedging in legal discourse will be provided in the following section.
2.3 Hedging in legal discourse

This section looks at hedging specifically in legal discourse, and covers previous studies, lexico-grammatical realizations of hedges, hedging strategies and hedging functions. Example utterances are taken from this study’s corpus.

2.3.1 Previous studies

While studies of hedging in scientific and academic discourse abound and have been used for the basis of much of the discussion in this chapter so far, there appears to be far less research focusing on hedging in legal discourse specifically. Bhatia et al. (2004) explored the use of hedging in the legal problem question answer genre and concluded that both lexical surface hedges and non-lexical strategic hedges (based on Hyland’s (1996a) taxonomy) are “crucial for deductive reasoning and legal argumentation” (2004:218).

After closer examination involving specialist informants from the field of law, it was found that many of the items which had been identified as potential hedges were found in the rule section of the texts (following the IRAC model explained in the previous chapter) but, in fact, had no epistemic value (Bhatia et al. 2004: 231). Rather, they were markers of intertextuality and interdiscursivity (as explained in Chapter 1). Many of the true hedges appeared in the discussion of suggested possible outcomes in the application section of the IRAC structure. This section is essential for a complete and comprehensive
answer to a legal problem question as it allows the student to demonstrate he can apply knowledge to a hypothetical set of facts and reach a reasoned conclusion. Bhatia et al. suggest a reason for why true hedging may appear in the application section when they assert

…the analysis and application of the relevant laws to the facts is the most important part of the answer, since it requires evidence of deductive reasoning and careful consideration of the problem facts. If the question is well written by ensuring some facts are uncertain or raising uncertain issues of law, then the conclusions should never be certain but rather presented as likely outcomes (2004: 219).

While Bhatia et al.’s (2004) focus was the use of hedging devices in the legal problem question answer, others have addressed hedging used in judicial opinions. Toska (2012) centered his study on the use of hedging to express epistemic attitude in Supreme Court judgments of the United Kingdom. He asserts that hedges convey a judge’s stance on a given issue while interacting with the addressees as in the following:

A measure may be appropriate to achieving the aim but go further than is (reasonably) necessary in order to do so and thus be disproportionate. (Case ID UKSC 2010/0102, 25 Apr 2012) (Toska 2012: 60).

In this case ‘may’ conveys the judge’s viewpoint that a specific ‘measure’ can be both appropriate and disproportionate. Use of ‘may’ also conveys the

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23 The current study focuses on Supreme Court opinions from the United States, which are similar, but not identical to those from the United Kingdom.
24 It is important to note that he limited his hedges to only three, the modal verbs may, might and could.
judge’s desire to appear less categorical and involve the addressee in the argument, opening a dialogically expansive discourse space for debate.

Hinkle et al. looked at judgments at the U.S. District Court level and found that “district court judges not ideologically aligned with the majority of the overseeing circuit judges use more hedging language in their legal reasoning in order to insulate these rulings from reversal” (2012: 407). Thus, the greater the ideological distance between the district court judge writing the judgment and the circuit court judge reviewing his decision, the greater the amount of hedging used. They cite this example from a judgment written by a district court judge ideologically unaligned with the circuit court judge:

The record before the Court therefore suggests that Customs Service could conduct its inspections in Canada as U.S. Immigration apparently already does. In addition, it would appear possible to conduct Customs inspections of all international travelers . . . . It may also be possible to segregate international travelers from domestic travelers. While the testimony indicates that these measures would pose logistical difficulties, “convenience” to the Government is not the touchstone for Fourth Amendment analysis. (Hinkle et al, 2004: 422-423 citing United States v. Graham, 117 F. Supp. 2d 1015, 1022 (W.D. Wash 2000).

Hinkle et al. pointed out that the above could have been much less vague and more direct, and suggest the following re-write:

The government has the ability to conduct Customs inspections and can segregate travelers. I recognize that these measures will pose logistical difficulties, but I hold that these difficulties do not alter the Fourth Amendment analysis (2004: 423).
In their view the district court judge chose to use such expressions as: ‘the record... suggests’; ‘it would appear’; ‘the testimony indicates’, in order to persuade the circuit court judge that his decision is based on the facts, and to play down his active role. As will be seen in section 2.2.3, the above are examples of the strategy of depersonalization. Further, as an example of indetermination, the judge also makes his conclusions unassailable by stating that they *may* be possible.

By using vaguer language, district court judges hope to deflect scrutiny and avoid conflict which could result in their decision being overturned. Since the only method by which a district court judge can transmit his opinion and reasoning is through the written judgment, he will take the opportunity to defend his position and persuade the review court of his reasoning. As Hinkle et al. explain:

> The standards of review, some of which are extremely deferential, allow district courts the opportunity to defend and justify certain decisions, such as the admittance of evidence, as within their discretion. A reviewing court will have to expend more effort and more resources in order to find an “abuse of discretion” if the district court has carefully justified its decision and ensconced its more ideological legal reasoning in vague language (2012: 419).

It is important to point out that Hinkle’s (2012) findings apply at the district court level, but not necessarily at the Supreme Court level. Given that the Supreme Court is the highest review court, meaning its decisions are not subject to
review by any other court, other factors may be at play when hedging is used in a judicial decision at this level. In addition, while some research has been carried out on hedging in judicial opinions as seen above, no evidence has been found of similar research into academic articles specifically in the field of law.
2.3.2 Lexico-grammatical items used as hedges in legal discourse

Drawing on Holmes (1988), Hyland (1998c) and Hyland and Milton (1997), Bhatia et al. drew up a high frequency list of lexical items used to express epistemic certainty and doubt specific to law (2004: 231) (See table below). Bhatia et al.’s (2004) list focused on lexical hedges, as opposed to strategic hedges, categorizing these into modal verbs, lexical verbs, nouns, adjectives and adverbials following on from Hyland’s (1996a) taxonomy.

Bhatia et al.’s (2004) list was the first to consider realization of hedging in legal discourse. While their list is aimed at the legal problem question answer genre, given the similarity in argumentation, this list could be applied to other written legal genres as well, including the Supreme Court opinion and the law review article. However, only those expressing lack of certainty could be potentially classified as a hedge. Therefore, while Bhatia et al.’s (2004) list informed the list of potential hedges used in this study (See 4.3) items such as the modal verbs of certainty (must, cannot, could not, will) as well as other lexical items (certainty, certainly, no doubt among others) were omitted.
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<th>MODAL VERBS</th>
<th>Probability</th>
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<th>LEXICAL VERBS</th>
<th>NOUNS</th>
<th>ADJECTIVES</th>
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<td>Argument</td>
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<td>Appear</td>
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<td>Argue/is arguable</td>
<td>(un) certainty</td>
<td>(Un) (not) clear</td>
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<td>Assume</td>
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<td>Claim</td>
<td>Conclusion</td>
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<th>QUANTIFIERS / CONTRAST MARKERS</th>
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<td>As/since</td>
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Figure 2.2 Items expressing certainty/doubt in problem questions (Bhatia et al., 2004: 231)
As was seen in 2.2.3, lexico-grammatical items can often signal that a specific hedging strategy has been put into place. In the following section, realization of a hedge will be linked to the strategy it can be used to carry out, and examples provided from the corpus used in this study.
2.3.3 Hedging strategies in legal discourse

In section 2.2.2, four hedging strategies were identified in the literature arising from the study of academic and scientific discourses: indetermination, depersonalization, subjectivization and camouflage hedging. Hinkle et al. (2012) suggest that these strategies are equally present in legal discourse. Each strategy will be considered in turn below.

1) Indetermination

Indetermination, as will be recalled, adds fuzziness or uncertainty to a proposition by making it less explicit and vaguer in terms of quality or quantity. For example, ‘roughly’ is often used to denote an imprecise quantity, while ‘somewhat’ can add imprecision to quality or identity, as demonstrated in the following extracts from a law review article and a judicial opinion respectively:

Available data suggest that there are roughly as many secondary market transactions per year as there are primary market transactions (Thomas, 1999).

Applying the principles of Vernonia to the somewhat different facts of this case, we conclude that Tecumseh’s Policy is also constitutional Board of Education v. Earls (2002: 827).

Indetermination can be achieved by a variety of lexical items:

- Through the use of modal verbs:

  …but application of the Commonwealth’s constitutional requirements could warrant a different result (Harris, 2003: 20).
Chapter 2: The Concept of Hedging

Whatever merits these and other policy arguments may have, it is not the province of the Court to rewrite the statute. Artuz, v. Bennett (2000: 9)

A program of individualized suspicion might unfairly target members of unpopular groups. Board of Education v. Earl (2002: 834)

• Through the use of adverbs:

The court hoped that constitutional conventions would somehow be better equipped than legislatures to consider constitutional changes (Donley et al. 2002: 300).

Petitioner contends that such an interpretation of the statutory phrase renders the word “properly,” and possibly both words (“properly filed), surplusage… Artuz v. Bennett (2000: 8)

Petitioner’s minor daughter, LaShonda, was allegedly the victim of a prolonged pattern of sexual harassment. Davis v. Monroe City Board of Education (1999: 630)

• Through the use of adjectives:

The so-called strict interpretation circuits two, three, seven, eight, and nine may require more specific language in the dismissal order… (Denlow, 2003: 16).

It is unclear whether the Tribe’s relationship with petitioner is at all relevant. Atkinson Trading Co. v. Shirley (2001: 653)

• Through compound hedges, meaning a combination of adverbs, adjectives and a modal:

Even if the legislature somehow could authorize the court to change a proposed amendment, the purported concession was allegedly extracted from the legislature’s counsel at oral argument… (Donley et al. 2002: 309).
Chapter 2: The Concept of Hedging

It is somewhat unclear whether the Bess court intended further departure from the California test... (Donley et al. 2002: 323).

- Through the use of epistemic lexical verbs:

  Rather, the court crafted a “hybrid” test that appears to involve a sliding scale relating the qualitative and quantitative elements to one another. (Donley et al. 2002: 301).

  We hold as we do because respondent’s view seems to us the only permissible interpretation of the text. Artuz v. Bennet (2000: 9).

- And, through the use of epistemic nouns:

  There is some evidence that local authorities sometimes invoke...Tenth Amendment arguments to avoid the heightened responsibilities... (Thomas, 1999).

It is interesting to note that an indeterminate expression of quality such as the adverb ‘possibly’ could make the statement vaguer, but also unassailable, as in the following examples taken from the corpus in the present study:

  The recent case of Cheek v. United States possibly signals the beginning of a major change in attitude of the federal courts toward the tax protest movement (Oring and Hampton, 1994).

2) Depersonalization

Depersonalization is a strategy which allows the writer to avoid direct reference to himself. The idea is to distance himself from the responsibility inherent in the propositions which are expressed. Ways to achieve this include:
• Using ‘the authors’ instead of ‘I’;

This is, to the best of the authors’ awareness, the only case in which an American court has ever altered the text of a legislatively proposed constitutional amendment... (Donley et al. 2002: 308).

• Using agentless passives and other impersonal expressions such as:

The following language is suggested where parties may later seek enforcement of the settlement by the court. (Denlow, 2003: 21).

The shows have been reported to be extremely profitable. (Thomas, 1999).

• And shifting the responsibility from the author to some other entity. In the following ‘the provision’ and ‘available data’ serve as the abstract rhetors:

The provision ...suggests that the behavior be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity. Davis v. Monroe City Board of Education (1999: 650).

Available data suggest that there are roughly as many secondary market transactions per year (Thomas, 1999).

3) Subjectivization

Subjectivization indicates that what is being said is personal and subjective, and not necessarily the truth. It is often signaled by means of a first person pronoun plus a referring verb: I / we ‘+ (think/believe/assume/hold/argue/find).

In addition, ‘to our knowledge’ ‘in our view’ or ‘for all we know’ can be used as in the example below:
We hold as we do because respondent’s view seems to us the only permissible interpretation of the text – which may, for all we know, have slighted policy concerns on one or the other side. Artuz v. Bennett (2000: 9)

In Part VI, I argue that while the Brady Act’s background check provision may have imposed undue hardship on many law enforcement officers, it is debatable just how much “hardship” the Act really entailed. (Thomas, 1999).

We also suggest that the court require that amendment propositions embrace only one subject. (Donley et al. 2002: 336).

We find unpersuasive respondents’ attempts to augment this claim. Atkinson Trading Co. v. Shirley (2001: 657)

4) Camouflage hedging

Finally, camouflage hedging displaces the focus of the addressee’s attention or negative reaction from the proposition by using such emphatic expressions as ‘really’, ‘in fact’ or ‘indeed’, often in conjunction with a hedge. Hinkle et al. (2012) indicate that judges often use a variety of intensifiers to ‘divert attention away from the less definite, perhaps hedged, aspects of a decision’ (2012: 424). This is demonstrated by the following example from a Supreme Court opinion.

In fact, evidence suggests that it has only grown worse. Board of Education v. Earls (2002: 831).

Use of the abstract rhetor ‘evidence’ distances the writer from the proposition itself. In addition, the use of ‘suggests’ further indicates that this is an opinion
as opposed to fact. These two hedging elements serve to shield the writer from negative reaction from those who disagree with the proposition. However, the intensifier ‘in fact’ diverts attention away from the inherent uncertainty in this proposition, giving the illusion that the statement is stronger than it appears.

Nevertheless, while camouflage hedging can be found to a degree in both legal genres under study, it is much more prevalent in law review articles. That seems logical for an academic genre where appearing to have some conviction in claims made must be carefully balanced with not appearing categorical. It is also logical given that in such an academic genre the writer is more concerned with losing face and rejection by the discourse community than in a Supreme Court opinion where loss of face and rejection are not at issue. After all, the Supreme Court is the highest court in the land, and decisions taken there are binding on all other lower courts. A prime example of camouflage hedging achieved through the use of an epistemic modal verb and the intensifier ‘indeed’ can be seen in the example below from a law review article:

In parts of the country where handgun purchases are frequent, such as the Western states, Count CLEO’s could be very busy indeed. (Thomas, 1999).

Camouflage hedging achieved through the use of the intensifier ‘in fact’ and epistemic lexical verbs and adjectives is apparent in the following example.

In fact, I think the opposite is likely to happen since courts tend, today, to look for “purposes,” and so they tend to gravitate toward general statements. The
The hedging strategies discussed and illustrated above can be linked to hedging functions. Examples of hedging functions taken from legal discourse will be the subject of the following section.

(Nourse, 2012: 110).
2.3.4 Hedging functions in legal discourse

As was discussed in 2.2.2, hedging appears to stem from both macro-level and micro-level motivations. On the macro level, writers wish to gain entry to a specific discourse community. Since a degree of hedging has become conventionalized and is expected in certain genres, hedging allows the addressee to conform to a writing style which is accepted by the discourse community (Salager-Meyer, 1997). As Hyland sums up, hedges – along with boosters – “balance objective information, subjective evaluation, and interpersonal negotiation” according to appropriate disciplinary norms (2005b: 180).

In addition, hedging can reflect certain micro-level motivations arising from the writer’s personal desire to save face, show tact or appear modest. Thus hedging can fulfil the following functions:

1. Shielding the addressee from potentially negative or embarrassing responses, thus helping to avoid conflict which could damage communication (Namsaraev, 1997; Mauranen, 1997).

2. Emphasizing the subjectivity of a claim by presenting it as a reasonable opinion rather than a certain act, which, in turn, invites the reader to participate in its ratification (Hyland, 1996a). This also opens up a discursive space indicating respect for other viewpoints. (Hyland, 2005b; Hyland, 2009).

3. Allowing the addressee to show commitment or lack thereof to the truth value of a proposition in order to either disguise the fact that he does not know all of the precise details (Fraser, 2010) or to achieve greater precision by expressing the true level of knowledge and understanding he has of the topic (Salager-Meyer, 1997).

4. Enabling the writer to convey stance in relation to a claim.
Salager-Meyer (1997) proposes that the first function, shielding the writer, can be achieved by minimizing personal responsibility for a claim. The writer can distance himself from a claim by employing the strategy of depersonalization, for example. This can be achieved through the use of the passive voice as in the following:

The following language is suggested where parties may later seek enforcement of the settlement by the court. (Denlow, 2003: 21).

It can also be achieved through shifting the responsibility from the author to some other entity, especially some abstract rhetor such as ‘the provision’:

The provision ... suggests that the behavior be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity. Davis v. Monroe City Board of Education (1999: 650).

Hyland (2005b) suggests hedges can also afford the writer some protection from counter claims by allowing the writer to present a claim as opinion rather than fact. This can be achieved through subjectivization as in the following example.

We hold as we do because respondent’s view seems to us the only permissible interpretation of the text – which may, for all we know, have slighted policy concerns on one or the other side Artuz v. Bennett (2000: 9).

The justices are persuading the parties involved in the court case, as well as the wider audience of legal practitioners, that their reasoning is sound given
their knowledge of the facts of the case. The hedges ‘seems to us’ and ‘for all we know’ signal that this is an opinion.

Subjectivization can also accomplish the second function listed above, namely to emphasize the subjectivity of a claim which opens up a discursive space for other opinions to be presented. Hedges mark statements as provisional, thus readers are invited to participate in their ratification. This allows respect for other viewpoints, and deference and modesty are conveyed (Hyland, 2005b; Salager-Meyer, 1997).

Paradoxically, however recognizing other viewpoints often has the effect of strengthening one’s claims. Hinkle et al. (2012) suggest that in Law, as in other fields, a definite, direct statement is often used in conjunction with weakening devices such as hedging for that purpose. Meyer (1997) asserts that strengthening an argument by weakening the claim is a quite common strategy in academic writing. This is clear in the following examples in which the strategic hedges ‘while’ and ‘although’, in conjunction with negation, are used:

While we do not dispute the common sense of this approach, the words of the statute do not permit it. Caron v. United States (1998: 313).

Although we have no cause to doubt respondents’ assertion that the Cameron Chapter of the Navajo Nation possesses an “overwhelming Indian character,”…we fail to see how petitioner’s operation of a hotel on non-Indian fee land “threatens…the economic security…” Atkinson Trading Co. v. Shirley (2001: 656)
White sees hedging as dialogic. Thus, hedges such as ‘perhaps’, ‘admittedly’ or ‘I think’ among others serve to “acknowledge, engage with and align with respect to [previous or future] positions which are in some way alternatives to that being advanced” (White 2003: 260). The following example from a law review article illustrates this tendency:

Moreover, perhaps due to the haste with which the issue was resolved, the court crafted a test that is unpredictable and unworkable, discounting important factors and overemphasizing trivial ones. (Donley et al. 2002: 337).

In the example above taken from Law, the hedge ‘perhaps’ is dialogically expansive, meaning it entertains dialogically alternative positions (White, 2003: 260).

In the example from a Supreme Court opinion seen previously, ‘for all we know’ restricts the amount of knowledge taken into consideration when reaching a decision; therefore, it is dialogically contractive, limiting the context and implying that perhaps the justices are not open to other suggestions or alternatives to the claim they put forward.

...which may, for all we know, have slighted policy concerns on one or the other side Artuz v. Bennett (2000: 9)

The third function listed above, avoiding appearing over-precise or categorical, can be achieved through indetermination. The same example illustrates this:
We hold as we do because respondent’s view seems to us the only permissible interpretation of the text – which may, for all we know, have slighted policy concerns on one or the other side. Artuz v. Bennett (2000: 9)

The hedges ‘seems’ and ‘may’ imply that complete agreement is withheld from the idea that there is only one permissible reading of the text which has caused policy concerns to be slighted.

The fourth function listed above, allowing the writer to convey stance, is most often seen in Supreme Court opinions rather than law review articles due to the legally binding nature of the former. The justices do not feel the need to show the same level of tact or deference as academic writers, and do not fear the same challenges to their opinions either. Thus, it is not uncommon to find an example such as the following.

But it is wrong to suggest that this was uncontroversial at the time, or that this Court blessed universal fingerprinting for “generations” before it was possible to use it effectively for identification. Maryland v. King (2013) 25

So far in this chapter, hedging has been discussed from its origin as a linguistic term, to its development as a semantic, pragmatic, and socio-cognitive phenomenon. Its realization and role in legal discourse has also been

25 Note that no page numbers are available for Supreme Court opinions heard in 2012 and published online in 2013. Page numbers will not be available until the decision is published in a bound volume.
addressed. The last section of this chapter will turn its attention to how knowledge about hedging can be used in the classroom.
2.4 Pedagogical applications of hedging studies

The current study follows in the Swalsean (1990) and Bhatian (1993) ESP school genre tradition which has as one of its main aims “to find pedagogically utilisable form-function correlations and to explain the characterization with regard to socio-cultural and cognitive constraints operative in the relevant area of specialization” (Bhatia, 1993: 61). As a conclusion to the discussion of the theoretical framework, therefore, it is imperative to address pedagogical applications of studies on genre and hedging. By exploring one linguistic feature, hedging, across genres within the same field, it may be possible to describe how and why hedging is used by certain expert practitioners to further both institutional and private goals. This would be useful in creating targeted activities to increase learners’ hedging repertoire as well as their production and interpretation of hedging as well.

For some time linguistic items signaling hedging such as ‘somewhat’, ‘roughly’, ‘I think’, and ‘results seem to suggest’ were considered “marginal, even redundant items that contribute little to the communication” (Kaltenböck et al., 2010: 1), but now it is believed that they can be crucial in both spoken and written discourse. Today it is generally acknowledged that due to the important interactional and social functions hedges perform, as well as the role they play in conveying nuances in meaning having to do with certainty and commitment, learning to correctly produce and process a hedge is important.
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for advanced English language learners (Poos and Simpson, 2002). However, expressing and interpreting hedges appropriately requires a high level of pragmatic competence which is often not easily attainable unless specific pedagogical interventions are put into place.

Pragmatic competence has been defined as “the ability to communicate your intended message with all its nuances in any socio-cultural context and to interpret the message of your interlocutor as it was intended” (Fraser, 2010: 15). Fraser (2010) argues that while pragmatic competence is often underemphasized in second language teaching, producing non-native speakers who are grammatically accurate, but lack ability to achieve their communicative aims, this is especially true – and serious – in the case of hedging. He contends that the inability to hedge appropriately can result in second-language speakers being perceived as impolite, arrogant or offensive, and inability to interpret hedging can result in second language speakers failing to understand a native speaker’s meaning (Fraser, 2010: 15). Thus, hedging competence, the ability to use and interpret hedges appropriately, is often considered an integral part of general linguistic and pragmatic competence which allows us to assume our place in a community (Wilss, 1997).

There is little consensus on how best to aid students in attaining hedging competence. There are those, such as Spack (1988), who support an inductive approach to the teaching of hedging in line with communicative language
teaching practices, arguing that non-native students implicitly learn the discursive practices of a particular community through exposure to those practices, for example through reading and attending lectures. They contend that often second language teachers lack the disciplinary knowledge to conduct classes that would benefit non-native learners (Spack, 1988). Others, such as Hyland (2003), however, disagree with a universal ability to intuit norms and conventions through participating in the learning process, and being exposed to unanalyzed samples of expert writing. Inductive approaches advantage middle-class native students who, “immersed in the values of the cultural mainstream, share the teacher’s familiarity with key genres” which most non-native speakers do not share (Hyland, 2003: 19).

One researcher interested in the development of hedging competence is Wishnoff (2000) who studied the effect of deductive approaches to hedging instruction on non-native graduate students’ ability to mitigate claims in scientific writing. While her study focused on a quantitative analysis of the number of hedges the learners were able to produce, as opposed to a qualitative analysis of their effectiveness, Wishnoff concluded that targeted instructional activities had helped the students notice and subsequently produce hedging in their own, and published samples of writing.

While Wishnoff (2000) was interested in scientific discourse, Abbuhl (2006) focused on legal discourse. Her study centered on international Master’s
students at the Georgetown University Law Centre where her principal concern was the use of epistemic modals as hedges to signal a writer’s lack of commitment to the truth value of a proposition, as well as to subtly persuade the audience of a position in the legal memorandum genre. She found competent ability to use hedges in this way “notoriously problematic” for even advanced-level non-native speakers, especially in legal writing which she deemed crucial as the common law U.S. legal system, as opposed to code law, relies heavily on interpretation of precedents (2006:152).

Abbhul (2006: 153) highlighted two reasons for inability to attain hedging competence even among the most proficient non-native law students. Firstly, linguistic devices signaling hedging are nearly limitless and non-native writers may have mastered only a small number of these, leaving them with far fewer choices than their more proficient native counterparts. In addition, non-native writers may have been educated in different language cultures and disciplines that may have different norms regarding hedging. They may be unaware of discipline-specific norms guiding the use of hedging, and may mistakenly see the use of hedging as indicating a writer lacks confidence. Thus, Abbhul (2006: 153) concluded that non-native learners lack both a hedging repertoire and socio-cultural and disciplinary knowledge of the use of hedges resulting in them underhedging and consequently producing writing that is significantly more forceful in its claims than that produced by more expert native speakers.
Tessuto’s (2011) comparison between English and Italian law students supports the fact that different cultures approach hedging in different ways. Two similar genres, the English Legal Problem Question Answer and the Italian Pareri were compared, and it was found that:

...socio-cultural differences support the idea that Italian writers generally bring their readership around to the accuracy and legitimacy of their reasoning by using more categorical statements than the English, and therefore leave little room for likely contentions from their readers. By contrast, it is customary for English writers, in any disciplinary discourse, to achieve the same effect in their reasoning by cautious statements constructed through a variety of hedging devices (Tessuto, 2011: 308).

Alonso et al. (2012) suggest that lack of hedging competence may come down to pragmatic transfer. Non-native students brought up and educated in different language cultures may apply different sociopragmatic and pragmalinguistic rules to hedging than native speakers. Alonso et al. (2012) explain that while politeness, for example, is probably a universal concept, politeness strategies and understanding of how and when they should be applied may depend on culture. Students may apply pragmalinguistic transfer of politeness values and appropriate strategies from their L1 to the target language, English, for example. They may apply sociopragmatic transfer from their L1 when interpreting the context and the relationship between the participants as well. The influence of L1, the student’s native language, on L2, English, varies, however depending on the student’s level of proficiency and cultural knowledge.
In their study, Alonso et al. found that Spanish students either failed to identify hedges in the L2, English, or considered them to be “negative, evasive concepts” (2012: 47). They explain that while hedging can imply politeness and respect for a discourse community, helping to avoid conflict, the Spanish students associated them with “lack of clarity, insecurity and lack of validity of the proposal being expressed” (2012: 58). This is problematic on two fronts. Firstly, non-native students who are unaware of the presence or function of hedges in a passage, and believe that an unhedged passage is better because they perceive it to be clearer and more conclusive, may not share the principles of good writing with native and more expert members of their discourse community. Writing which is too direct and not nuanced typically distinguishes non-native from native writers (Wishnoff, 2000). In addition, these students may not be aware of the connotations conveyed by hedging which would enable them to better identify the level of commitment to the truth of a proposition, thus hindering their reading comprehension.

Having highlighted the difficulty many non-native students find in attaining hedging competence, it is opportune to explore pedagogic interventions which might aid them. Like Wishnoff (2000), Abbuhl (2006) advocates an explicit, deductive approach to the teaching of hedging. Salager-Meyer (1997) proposed specific text-based activities to help students learn to recognize and use hedges, and develop sociolinguistic and cultural or discipline awareness.
As a reading exercise, for example, she suggested that students circle tentative verbs and modal auxiliaries they could find in a given passage, and then underline other hedges with a view to entering into a discussion on why and how writers might want to mitigate their statements (1997: 115). To develop writing skills, she suggested that students re-write statements of fact using more tentative verbs. For example:

Middle insomnia is associated with exacerbations of illness in patients with rheumatoid arthritis,

Can be re-written as:

Middle insomnia may be associated with exacerbations of illness in patients with rheumatoid arthritis (1997: 116).

Salager-Meyer (1997) also suggested it would be useful to instruct students to emphasize the speculative nature of their conclusions in their own writing using such hedges as ‘seem’, ‘suggest’, or ‘appear’. Another activity she recommended for more proficient students consisted of presenting them with two articles with conflicting opinions on a challenging subject, and then asking them to express their own views on the subject using appropriate hedging. This could have the advantage of helping students to develop critical skills as well since many may come from “a culture where the infallibility of the written word is deeply ingrained (and) consider it heretical to criticize and question what is written” (1997: 117).
Both Hyland (1996b, 2007) and Bhatia et al. (2004) propose using concordancing software as well as texts to help students to develop hedging competence. Firstly awareness of form and function of hedges could be raised by having students:

- Identify hedges in a text and classify them according to form or function,
- Remove all hedges from a text and discuss how meaning has changed,
- Compile a scale ranking hedges by degree of certainty or doubt,
- Examine similar texts for variation in hedging, and
- Translate the hedges into the L1 to determine if there are cross-cultural differences.

Bhatia et al. (2004) also suggest that legal students identify relationships and use of hedges between the Rule and Analysis sections in legal discourse. In addition to developing awareness, both Hyland (2007) and Bhatia et al. (2004) advocate contextualizing as a second step in developing hedging competence. Analyzing similar content in different contexts would allow students to “see the importance of hedges as discourse-based strategies and how they relate to the writer’s overall text plan” (Hyland, 2007: 19). Hyland suggests, for example, having students compare an article with an unhedged popularization of the same topic. In the realm of Law, Bhatia et al. (2004) recommend comparing different answers to the same legal problem question.

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26 In this case in the proposed likely outcomes found in the Application and Conclusion sections of the legal problem question answer genre, but given the similarity of deductive reasoning, this activity could be applied to other legal genres, the U.S. Supreme Court opinion and law review article included.
as well as comparing opposing judicial judgments, not only to compare variations in expressions of certainty or doubt, but also to analyze variation in rule statements, case citation methods, and appropriacy of conclusions based on reasoning found in the rule and application sections (2004: 223).

Finally, Hyland (1996b) and Bhatia et al. (2004) appear to agree that there must be an ‘application’ stage in which students apply their knowledge of hedging to writing. Bhatia et al. (2004), focusing on the use of corpus linguistics in the teaching of legal English, suggest that students complete gapped texts, write alternative legal arguments and likely outcomes, correct poorly reasoned answers, and write answers to sample exam papers.

Hyland’s broader focus lead him to advocate activities in which “hedges must be seen as part of a wider process of creating and crafting complete texts, developing both a sense of audience and a sense of purpose in using hedges correctly to produce a complete, fully contextualised piece of work” (1996b: 485). He emphasizes the importance of an authentic writing environment and the development of the writing process in which the level of certainty of claims is discussed during the drafting stage, and hedges are refined by peer reviewers during the revision stage.

First, however, Hyland points out those students must be given ample practice in the form and functions of hedges (1996b: 485). To that end, he suggests
focusing on high frequency lexical hedges first, such as: the modals 'may', 'might' and 'could', as well as the epistemic verbs 'indicate', 'suggest', 'appear' and 'propose'; epistemic adverbs such as 'probably', 'possibly', 'apparently' and 'essentially'; and mitigators of varying force, such as 'quite', 'slightly', 'rarely' and 'relatively'. His view is that these high frequency items are more easily acquired and help to introduce the students to the concept, help them to understand its use and importance, and provides them with resources to express themselves before they are asked to produce more complex means of expression such as strategic hedges.

He recommends such productive tasks as:

- Linking statements to show an accurate assessment of the truth relations between them by including or omitting hedges,
- Completing contextualized sentences beginning with: in spite of; if...then; under these conditions among others
- Using a journalistic article or a politician’s speech as a starting point from which to produce a counter-argument using interpersonal hedges,
- Exploring personal options, such as alternative decisions which could have been made in the past, or alternatives for the future, through free writing,
- Having a native or expert writer re-write a student’s draft with a view to discussing and reflecting on the form and functions of the hedges employed.

Thus, given the importance of hedging in both spoken and written discourse, and the fact that non-native LL.M. students may be at a disadvantage in terms of a shared understanding of the target discourse community’s conventions
and expectation, it may be necessary to consider implementing certain explicit pedagogical interventions. It could be useful to create targeted activities to increase both learners’ hedging repertoire and their production and interpretation of hedging in order to help ensure success on post-graduate courses.

In conclusion, the two chapters which comprise the theoretical framework have sought to review the literature surrounding the concepts of ‘hedging’ and ‘genre’ with a view to informing and underpinning the use of the two terms in the present study. The next chapter will detail the methodology used to explore and explain differences and similarities in the way hedging is realized as well as the purposes hedging serves in the two genres chosen for analysis: the law review article and the legal judgment. Ultimately, it is expected that the results obtained will help to inform pedagogical interventions designed for EALP students, which is one of the motors of the current research.
CHAPTER 3:
METHODOLOGY
This study has set out to examine the frequency and role of verbal lexical hedging in two written legal genres, American law review articles and U.S. Supreme Court opinions. This chapter details both the corpus chosen for this study and the methodology followed. Section 3.1 briefly compares qualitative and quantitative research paradigms, and indicates that the present study adopted a mixed methods approach by integrating methods such as text analysis, from the qualitative research paradigm, and corpus analysis techniques belonging to the quantitative paradigm.

Section 3.2 addresses the genre analysis framework underpinning this study, namely Bhatia’s (2004) Critical Genre Analysis (CGA). This section briefly reviews the theoretical underpinnings of CGA and explores the seven steps involved in carrying it out.

Section 3.3 addresses the corpus used in this study and makes particular reference to how the corpus was refined throughout the analyses so that an optimal size was determined. Finally, section 3.4 details the data collection and data interpretation methods used in each of the four analyses.
3.1 Research paradigms

Linguistic research methods often subscribe to either the qualitative or quantitative paradigm, the former being concerned with “structures and patterns and how something is”, and the latter focusing on how much or how many there is/are of a particular characteristic or item” (Rasinger, 2010: 52). In addition, while qualitative methods are inductive in nature, resulting in theory being derived from results, quantitative methods are deductive: “hypotheses based on already know theory are developed, and then proven (or disproven) through empirical investigation” (Rasinger, 2010: 52). Quantitative research has the advantage that it allows for large numbers of items to be compared relatively easily, and is useful towards generalizing research findings, whereas qualitative research is “particularly valuable in providing in-depth, rich data” (Angouri, 2010: 33).

In the last decade or so, however, the qualitative/quantitative research method dichotomy has weakened in favor of a mixed methods approach, which has been defined as “the class of research where the researcher mixes or combines” both qualitative and quantitative elements (Jonson and Onwuegbuzie, 2004: 17). Especially in the social sciences researchers ...

...have consistently argued for, and indeed adopted approaches which attempt to integrate quantitative and qualitative methods of analysis, using the patterns identified by the quantitative analysis as essential background to assist in the detailed qualitative interpretation of the discourse (Holmes and Meyerhoff, 2003: 15).
Studies suggest that mixed methods approaches often enable comprehensive accounts to be constructed thus allowing a wider range of research questions to be answered (Greene et al., 1989). Mixed methods approaches provide “ways to answer research questions that could not be answered in any other way” (Tashakkori and Teddlie, 2003: preface), as well as reveal different aspects of “reality” (Lazaraton, 2005: 219). This is especially true if a pragmatic stance is adopted in which methodologies represent a collection of techniques as opposed to a purist stance in which qualitative and quantitative methods are seen as incompatible (Angouri, 2003: 30).27

As mixed methods research allows for diversity of views, it is often associated with triangulation or “the use of several methods to support each other” (Rasinger, 2010: 50) by means of “convergence of findings and corroboration of research results” (Angouri, 2010: 34). While this seems to imply there is one single objective reality or truth, which may be a problematic assumption, triangulation nevertheless adds a certain degree of credibility to research, while also allowing for greater elaboration of findings.

Thus, it is with the above advantages in mind that the present study adopted a mixed methods approach to the analysis of hedging in U.S. Supreme Court

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27 Admittedly, adopting a pragmatic stance implies a degree of instrumentality which does not always capture the philosophical underpinnings and complexities associated with the qualitative and quantitative approaches. However, it serves the purpose of the present study well.
opinions and American law review articles by integrating methods such as discourse analysis, from the qualitative research paradigm, and corpus analysis techniques belonging to the quantitative paradigm. However, to allow for the most comprehensive account possible of similarities and differences in hedging items, strategies and functions in the two chosen genres an overarching multidimensional, multidisciplinary and multi-perspective research framework was required, and Bhatia’s Critical Genre Analysis (CGA) model, whose conceptual and theoretical underpinnings were explained in 1.1.3, seemed most appropriate. The following sections will focus on Bhatia’s framework, briefly reviewing the scope of CGA, and exploring the steps and tools involved in carrying it out.
3.2 Bhatia’s critical genre analysis (CGA)

3.2.1 A four-space model

Bhatia explains that three factors have come together in the creation of CGA: firstly as a variety of disciplines have become interested in understanding discursive practices of a range of disciplinary and professional cultures, there has been “increasing, though often selective, appropriation of research methodologies across disciplinary boundaries” (2004:155). Secondly, as research into written discourse has been motivated by a wide range of applications, both within and across disciplinary boundaries, there has been increasing acceptance and encouragement of integration of research methodologies for its analysis. Finally, as the focus of analysis of written discourse has “shifted to more complex and dynamic aspects of discourse construction and interpretation, … the demands on the analysts have become more challenging” (Bhatia, 2004;155), thus requiring a more complex, multidisciplinary, multidimensional and multi-perspective research framework such as the one he suggests.

Bhatia proposes integrating a “range of methodological procedures which have rarely been used for the analysis of written discourse, such as the ethnographic, socio-cognitive and socio-critical…into a coherent genre analytical tool” (2004: 156). This “analytical tool” would aim to cover the three overlapping concepts of space (as described in 1.1.3): textual space, socio-cognitive space (including both tactical and professional space), and social
space. By means of review, investigation of textual space “focuses on the surface of the text, which may include analyses of statistical significance of lexico-grammar based on a corpus of texts...analyzed within the context of generic conventions and practices” (Bhatia, 2004: 160-161). It may also include intertextuality and some aspects of interdiscursivity (Bhatia, 2004:156). Correspondingly, in the current study, the statistical significance of lexico-grammatical items signaling a hedge, in a corpus of Supreme Court opinions and law review articles, was analyzed in two ways: qualitatively, using an interpretative approach, and quantitatively using concordancing software.

Although investigation of textual space may provide some interesting insights, it is not sufficient on its own (Bhatia, 2004: 161). Therefore, social-cognitive space is also investigated to account for both the tactical aspects of language use, in particular the relationship between text-internal features and text-external factors, as well as professional aspects of language use, particularly the relationship between participants and how this affects genre construction, interpretation and exploitation. Accordingly, for the current study and as suggested by Bhatia (2004) a review of the literature was carried out into the social structure, interactions, history, beliefs and goals of the legal discourse community served by the two chosen written genres. This was related back to strategies and functions of hedging in the two genres in order to meet discourse community expectations as well as further participants’ private intentions. As Bhatia explains, it is investigation into socio-cognitive space
which “makes it possible for the discourse analyst to observe genres in action
and ground textual analysis in the interpretive ethnographic contexts of genre
use, on the one hand, and in socio-cognitive analyses of the conditions under
which specific professional practices take shape, on the other” which he deems
“essential to any analysis and understanding of the discursive practices of a
professional community” (2004: 162).

Finally, investigation of social space accounts for social and institutional
practices “in a broader framework of language as social action” and touches on
such concepts as ideology and power. In the context of the current study, the
“broader framework” comprised non-native students embarking on an LL.M. in
an English-speaking country such as the United States, and issues
surrounding their empowerment to become successful members of their target
discourse community.

Having concluded a brief discussion about the four overlapping spaces\(^\text{28}\) which
are the concern of CGA, and their relevance to the current study, we will turn
our attention to the seven steps suggested by Bhatia (2004) in order to engage
in CGA.

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\(^\text{28}\) Investigation into these three spaces show an interesting overlap with Markkanen and
Schröder (1997: 14) who advocate a three-fold systemic research of hedges in written
communication from the point of view of Text as product, text as process, and text as
interaction.
3.2.2 CGA’s Seven Stages

In 1993, Bhatia began to develop a model of genre analysis, highlighting the role of private intentions in genre construction and interpretation, and recognizing the need to study genre from multiple perspectives. By 2004, Bhatia had elaborated a multidisciplinary, multidimensional, multi-perspective four-space model, in essence not unlike his 1993 model. The seven stages which Bhatia (2004: 164-165) suggests will be outlined below, but briefly they comprise the following:

- **Stage one** – Placing the given genre-text in a situational context
- **Stage two** – Surveying existing literature
- **Stage three** – Refining situational/contextual analysis
- **Stage four** – Selecting a corpus
- **Stage five** – Textual, intertextual and interdiscursive perspective, which can focus on one or more of the four following micro-levels of analysis.  
  - **Level 1**: Analysis of lexico-grammatical features
  - **Level 2**: Analysis of text-patterning or textualization
  - **Level 3**: Cognitive or discourse structuring
  - **Level 4**: Analysis of the role of intertextuality and interdiscursivity.
- **Stage six** – Ethnographic analysis
- **Stage seven** – Studying institutional context

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29 In Bhatia’s (1993) model of genre analysis, this step was termed ‘levels of linguistic analysis’ and did not highlight the roles of intertextuality and interdiscursivity as the 2004 model does.
Most of the stages correspond to “macro-levels of analysis, in so far as they are concerned with the broader context” (Flowerdew, 2011:146). The fifth stage, however, is concerned with micro-analysis of the genre. It was the intention of the current study to carry out a micro-level analysis of hedging in the two genres, both qualitatively and quantitatively, the results and analysis of which are presented in chapters 4 to 6. Each of the seven stages of CGA will be explained below, making reference to how they were applied to the present study.

**Stage one – Placing the given genre-text in a situational context**

The first stage of CGA involves calling upon prior experiences, knowledge of the discourse community and conventions governing communications within that discourse community, as well as textual clues to intuitively place “a typical representative example of the genre” (Bhatia, 1993: 22) in a situational context. Bhatia explains that if the researcher does not belong to the specialist discourse community which habitually makes use of the genre in question, relevant knowledge can be acquired by surveying existing literature (1993: 22). Thus, in addition to drawing upon knowledge gained from 10 years of teaching English for Academic Legal Purposes in a variety of settings, pertinent literature was reviewed (for example Bhatia, 1987; Friedrichs, 2001; Kurzon, 2001; van Geel, 2001; Williams, 2007).

**Stage two – Surveying existing literature**
Chapter 3: Methodology

Existing literature could comprise linguistic analyses of the genre, practitioner advice, guide books and manuals relevant for the speech community, or discussions of the history, beliefs, goals and social structure of the professional community which uses the genre in questions (Bhatia, 2004: 164). Thus, a wide variety of relevant sources were consulted for the present study (for example, Badger, 2003; Bhatia et al., 2004; Bowles, 1995; Candlin et al., 2002; Harris, 1997; Howe, 1993; Jones, 1980; Maley, 1985; Posner, 2004; Samuelson, 1984; Yelin & Samborn, 1986 among others).

**Stage three – Refining situational/contextual analysis**

While in stage one, the research drew upon prior knowledge and intuition to place the genre in a situational context, this stage requires a deeper contextual analysis in which different elements relevant to the genre must be defined including the participants (writer and audience) as well as their relationship and their goals, the historical, socio-cultural and philosophical underpinnings of the discourse community, the network of surrounding texts and linguistic traditions associated with the genre, and the topic or extra-textual reality the text is trying to represent (Bhatia 2004: 164). For the present study, a deeper analysis of pertinent literature (for example Alcaraz Varo, 1994; Bhatia, 1987; Endicott, 2000; Friedrichs, 2001; Kurzon, 2001; Swales, 1982; Williams, 2007 among others) was conducted, the results of which have been presented in 1. 2.

**Stage four – Selecting a corpus**
The texts which form the corpus must belong to a clearly defined genre, and be appropriate for a specific purpose (Bhatia, 2004: 164). The corpora used for this study will be discussed in section 3.3 below.

Stage five – textual, intertextual and interdiscursive perspective

Stage five consists of four potential levels of linguistic micro-analysis. It is important to point out, however, that “rather than viewing the various levels of analysis as distinctive and ‘atomistic’ steps, they should be viewed in a more holistic manner” (Bhatia 1993: 40), and rather than prescribing a strictly linear and chronological approach, it is left to the researcher to decide which level of analysis might be the most convenient to start with, and which levels might be omitted. In the present study, this stage focused on three micro-levels of analysis:

Level 1: Analysis of lexico-grammatical features

“An analysis of the lexico-grammatical features that characterize a particular genre often includes the quantitative (as well as qualitative) analysis of specific linguistic features that characterize a representative sample of a particular genre. This level of analysis may, for example, involve a statistical analysis of a corpus” (Schnurr, 2013: 50). In the current study both a qualitative and a quantitative analysis of the statistical significance of lexico-grammatical items which can indicate hedging were carried out.
The qualitative analysis consisted of performing a textual analysis on a small-scale corpus of U.S. Supreme Court opinions as well as on a small-scale corpus of American law review articles as per Salager Meyer (2000). That is, a small, representative corpus of U.S. Supreme Court opinions and American law review articles were randomly chosen. The chosen texts were examined for lexical items which could signal the presence of a hedge. Finally, simultaneous introspection and contextual analysis led to acceptance or rejection of a hedge based on the rhetorical strategy the lexical items were employed to fulfil, and their functions within the text. This allowed for differences and similarities in hedging between the two genres to be postulated.

Following the qualitative analysis of the small-scale corpora, four quantitative analyses were conducted using WordSmith Tools version 6.0 (Scott, 2013). Each successive analysis served to refine the corpus while exploring an optimal methodology with a view to ensuring reliability of any results garnered.

**Level 2: Analysis of text-patterning or textualization**

“While such an analysis [undertaken at micro-level 1] may confirm (or challenge) initial hypotheses about the frequency of specific lexical or grammatical features in a text or genre, it does not explain how these features contribute to establishing the overall communicative purpose of that particular genre“(Schnurr, 2013: 50). An analysis of text-patterning, on the other hand,
explores “the specific function certain recurring syntactic structures may have on meaning creation” (Schnurr, 2013:50). In other words, this micro level explores “functional characterization of lexico-grammar or textualization in terms of discoursal values” in clause level units of language (Bhatia, 2004: 9).

In the case of the present study, this level of analysis centered on functions carried out by hedges in utterances in the corpus, relying on an interpretative analysis of the discourse. Functions carried out by hedges in this study included:

- Allowing the addresser to show commitment or lack thereof to the truth value of a proposition in order to either disguise the fact that he does not know all of the precise details (Fraser, 2010) or to achieve greater precision by expressing the true level of knowledge and understanding he has of the topic (Salager-Meyer, 1997).

- Shielding the addresser from potentially negative or embarrassing responses, thus helping to avoid conflict which could damage communication (Namsaraev, 1997; Maura nen, 1997).

- Emphasizing the subjectivity of a claim by presenting it as a reasonable opinion rather than a certain act, which, in turn, invites the reader to participate in their ratification. This also indicates respect for other viewpoints and conveys deference and modesty.

It must be recalled, nevertheless, that hedging is often multi-functional. For instance, by complying with the discourse community’s expectations concerning the nature of knowledge, presumably an addresser is also striving to avoid negative reaction. Examples of multi-functionality are noted, when relevant, in the analysis of the results, in chapters 5 and 6.
Level 3: Cognitive or discourse structuring

This micro-level of analysis “often revolves around the identification of and description of specific moves of the genre under investigation” (Schnurr, 2013: 50). The move structure for the two chosen legal written genres was presented in Chapter 1. In addition this micro-level of analysis looks at how the addresser can use different rhetorical strategies to further different communicative intentions (Bhatia 1993: 29-30). The current study took into account four strategies identified by Namsaraev (1997) relying on an interpretative analysis of the discourse for their identification, namely indetermination, depersonalization, subjectivization and camouflage hedging.\(^{30}\)

Level 4: Analysis of the role of intertextuality and interdiscursivity.

Interdiscursivity refers to the appropriation of generic resources from other genres or professional practices in order to create new or hybrid genres and thus further private intentions, while intertextuality shows “how texts contain within themselves evidences of the histories of other texts” (Candlin and Maley, 1997: 203). It refers to the property of one text being used in another, either directly or by pragmatic implication. While legal discourse typically includes many examples of both intertextuality and interdiscursivity, analysis of these aspects were not within the scope of the present study.

Stage six – ethnographic analysis

\(^{30}\) See 2.2 for a description of each strategy.
Bhatia proposes the use of ethnographic methods to explore the context of specific genres, especially focusing on where, when and how these genres are created. To that end, he proposes three questions:

- What physical circumstances influence the nature and construction of genre?
- What are the critical moments of engagement or interaction?
- What modes of genre construction or communication are available at the critical moment or sites? (Bhatia, 2004: 165).

Common ethnographic methods used in applied linguistics include “observations of a group’s linguistic interactions, participation in the group, interviews with individuals who read or write in a genre” (Johns et al., 2006: 241) as well as “observation of physical sites of genre activity and interviews with genre users” (Johns et al, 2006: 242) or ‘textography (Swales, 1998) which “combines elements of text analysis with elements of ethnography in order to examine what texts are like, and why” (Paltridge, 2008: 10). If lack of access to physical sites of genre activity or to genre creators and users is an issue, Bhatia conveniently lists other, perhaps more accessible, means by which to gather ethnographic data including:

- accounts of practitioner advice, guide books, and manuals written for members of the relevant professional discourse community,
- discussions of the social structure, interactions, history, beliefs and goals of the professional community that uses the genre,
• detached observational accounts of expert behavior, as opposed to accounts by members of a discourse community who have had a long-standing association with a particular site of engagement for the genre which might lead to personal bias,

• lived experiences of expert members of the community of practice, and

• narrative accounts of first-hand experiences of active professionals (Bhatia, 2004 165-166).

In order to achieve a thicker description of how, why and when hedging might be used in the chosen genres, a variety of sources were consulted (for example, Coffin, 1994; Kurzon, 2001; Posner, 1985; Posner, 2004; Renquist, 1987; van Geel, 2001).

Stage seven – Studying institutional context

This stage can focus on “the system and methodology in which the genre is used and the disciplinary conventions that govern the use of language in such institutional settings” (Bhatia, 2004: 166). Much of the information on these aspects can be obtained from the same sources used in stage two: surveying existing literature, and stage six: ethnographic analysis, namely, guide books, manuals, practitioner advice and discussions of the organizational context, social structure, interactions, history, belief and goals of the community of practice.
To conclude this section, CGA, as proposed by Bhatia (2004) makes use of several types of analytical data:

It draws on textual data by treating genre as a reflection of discursive practices of disciplinary communities. It draws on ethnographic data, in that it seeks to observe genres in action, grounded in narrated insightful experiences of expert members of the community of practice. It also draws on socio-cognitive and institutional data, as it draws on historically and structurally grounded accounts of the conditions under which systems of genre are constructed, interpreted, used and exploited by expert members of disciplinary cultures to achieve their typical goals within the construct of their everyday professional activities (Bhatia, 2004: 168).

In addition to providing a useful framework for a multidimensional and multi-perspective analysis of the two genres chosen for this study, another advantage of CGA is its flexibility which allows the researcher certain discretion when deciding which tools to use in order to best answer the proposed research question.

Having concluded the section explaining how the genre analysis framework underpinning this study, the next section will turn its attention to the methodology applied in this study, namely corpus analysis.
3.3 Corpus

Baker suggests that “a corpus normally consists of a sample that is maximally representative of the variety under examination, is of a finite size, exists in machine readable form and constitutes a standard reference for the language variety which it represents” (2010: 95). The corpora used in the present study is specialized, and limited in terms of genre (U.S. Supreme Court opinions or American law review articles) and place (the United States). The two corpora chosen for this study comprised two written discourse genres which are commonly read by LL.M. students in the United States, namely American law review articles and U.S. Supreme Court opinions. The decision to limit the corpora to one place, and therefore one particular legal system, was two-fold. Firstly, while the legal system in the U.K. and the U.S. are frequently jointly referred to as the ‘Anglo-American legal system’ due to their similar origins and court hierarchies, there are, in fact, many differences between the two (Alcaraz, 1994). One area of difference for example, which overlaps with hedging, is politeness. Kurzon (2001) found that politeness is inherent in the opinions of English appeal judges, but not in the opinions of American judges (Kurzon, 2001).

Secondly, there is evidence that hedging itself is culture-specific. Wilss (1997), who advocates more research into hedging devices in individual language pairs (e.g. Spanish / English), and suggests that more similarities than differences would probably be found as evidenced by the fact that hedges are
easily translated, does, nevertheless, contend that indeed some cultures seem to hedge more than others. Similarly, Kurzon (2001) discovered that English judges tend to modulate disagreement while American judges do not, which he attributes more to a difference in general, as opposed to legal, cultures.

The size of the corpus used in this study was modified over the five separate analysis that were carried out (referred to as A1, A2, A3, and A4). This responded to a need to explore an optimal methodology in order to be able to present reliable, quantifiable results. The table below records the changes in size the corpus underwent.

<table>
<thead>
<tr>
<th>Analysis</th>
<th>American Law Review Articles</th>
<th>U.S. Supreme Court Opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Files</td>
<td>Tokens</td>
</tr>
<tr>
<td>A1</td>
<td>3</td>
<td>29,032</td>
</tr>
<tr>
<td>A2</td>
<td>3</td>
<td>29,032</td>
</tr>
<tr>
<td>A3</td>
<td>156</td>
<td>4,765,307</td>
</tr>
<tr>
<td>A4</td>
<td>20</td>
<td>668,983</td>
</tr>
</tbody>
</table>

Figure 3.1: Size of Corpus

In the following sub-sections, each analysis will be addressed in turn. Reasons for refining the corpus will be explained as well as exact methodology followed.
3.4 Data gathering and interpretation

This section discusses the data gathering and interpretation tools and techniques used in each of the analyses A1 to A4.

3.4.1 Analysis A1

The first analysis, labelled Analysis A1, was purely qualitative, and to facilitate data gathering, a small but representative corpus of seven total texts was used. Both the Supreme Court opinions and law review articles used in A1 were published between 1994 and 2003. The law review articles came from sources readily available online at the time: The Richmond Journal of Law and Public Interest (University of Richmond), The Alaska Law Review (Duke University), and University of West Los Angeles Law Review (University of West Los Angeles).

Salager Meyer (2000) advocates an approach that makes use of introspection and intuition on the part of the researcher when investigating hedging, due to the roles intuition and hedging competence play in the identification of a hedge. Thus, a qualitative method, namely textual analysis, rather than quantitative data gathering and interpretation techniques were used firstly in the present study. This was made feasible by using such a small, but representative corpora as gathering qualitative data using a large-scale corpus could be “tedious, inaccurate and incomplete” (Bhatia et al. 2004: 212).
Accordingly, the seven representative texts were read, hedges were identified. Determinations of what counted as a hedge were based on a number of considerations. For example, a potential hedge should serve one of the following functions in the text:

- To mitigate the degree of commitment an author may have to the truth of some statement thus allowing the author to respond to discourse community expectations concerning the nature of knowledge.

- To tone down statements so that the addressee can avoid personal accountability and consequently negative reaction especially in the case of conflictive or contradictory evidence, thus minimizing the ‘threat-to-face’ to the addressee.

- To allow for authors to assume a certain humility and deference thus serving as a politeness strategy and minimizing the ‘threat-to-face’ to the addressee

- To soften the illocutionary force of a counter-argument in order to reinforce the writer’s own argument

Below are two example sentences which indicate the types of decisions made in identifying a hedge (underlined). In the first example, the noun ‘evidence’ is used epistemically, to create an impression of objectivity while the addition of ‘some’ and ‘sometimes’ make the utterance vague perhaps as a way to disguise the fact that the author does not know the precise details (Fraser 2010), or, more likely, to mitigate the claim that local authorities’ invocation of the 10th Amendment is often self-serving in order to prevent a negative reaction and save both the addressee’s and the addressee’s face. In the second example, the clause beginning with ‘although’ can be seen as a
strategic hedge which softens the illocutionary force of a counter-argument in order to reinforce the author's claim.

(1) There is some evidence that local authorities sometimes invoke federalist or Tenth Amendment arguments to avoid the heightened responsibilities that local-oriented solutions demand. High-sounding "federalist" arguments, warning of unwanted Congressional intrusion into local affairs become, in effect, a crutch to support and justify what I call "local lethargy" (Oring and Hampton, 1994).

(2) Although the Supreme Court's recent Tenth Amendment rulings are a positive step, in that they (i) encourage the rise of localism, and local solutions, as an antidote to the stultifying conformity induced by a mass-media driven society, and (ii) are sensitive to the values of representation and fairness, states and localities must avoid using federalism as a crutch. Federalism, if it is to work properly, demands local responsibility and initiative at least as much as it requires Congressional non-interference (Oring and Hampton, 1994).

By contrast contextual analysis indicated that neither ‘evidence’ nor ‘alleged’ in the following example is used epistemically. Rather, they carry technical legal meanings and are thus not lexical hedges. This is but one example of how careful reading of all instances of potential hedging was necessary to determine if hedging was taking place:

(3) The drop-off in LaShonda’s grades provides necessary evidence of a potential link between her education and G.F.’s misconduct, but petitioner’s ability to state a cognizable claim here depends equally on the alleged persistence and severity of G.F.’s actions, not to
mention the Board’s alleged knowledge and deliberate indifference. Davis v. Monroe County Board of Education (1999: 649)

After their identification, lexico-grammatical items signaling hedges were coded according to Hyland’s taxonomy. Thus, items were separated into lexical or strategic hedge, lexical hedges comprising the following categories: modal verbs, epistemic lexical verbs such as ‘seem’ and ‘appear’, epistemic adverbials such as ‘somewhat’ and ‘potentially’, epistemic adjectives such as ‘likely’, ‘possible’ and ‘debatable’, and epistemic nouns such as ‘evidence’. Strategic hedges included if clauses, clauses beginning with the contrast markers ‘while’ and ‘although’, and certain prepositional phrases such as ‘under certain conditions’.

Finally, a preliminary list of potentially high frequency items used to signal hedging was drawn up, and differences and similarities between the genres were noted. Initial conclusions were reached concerning realization of hedging in the two genres. The results of this analysis is presented in section 4.1.

Nevertheless, it is important to recognize that an element of subjectivity may be present in qualitative analysis. McKee explains that textual analysis, in essence, consists of making an informed opinion regarding “some of the

31 This list included 47 lexical hedges and 17 strategic hedges.
most likely interpretations that might be made” (2003: 1) about a text. As Baker points out, “humans do not always make accurate introspective judgements regarding language, instead relying on cognitive and social biases” (2010: 94). Hedging identification, like hedges themselves, is seldom clear-cut, and doubts may remain despite intended objectivity (Salager-Meyer, 2000).

Thus, the challenge of the present study was to support initial conclusions based on introspection with empirical data gathered through the use of corpus-based analyses tools, such as concordancing software. This need to balance a qualitative and a quantitative approach led to analysis A2.
3.4.2 Analysis A2

Analysis A2, the results of which are presented in section 4.2 of chapter 4, was the first of three quantitative analyses using WordSmith Tools 6.0 (Scott, 2013). Using the same small corpus of seven representative texts, the 47-item list of potentially high frequency lexical hedges\(^{32}\) drawn up after analysis A1 was loaded onto the WordList function of WordSmith Tools 6.0 (Scott, 2013) as the match list file, and unmatched entries deleted. The results were then color-coded according to part of speech. This allowed for the initial conclusions in A1 to be verified to some extent. However, analysis A2 was deemed limited in scope. Not only was the corpus very small, with a total of just under 50,000 tokens, but also the list of potential hedges was very limited. For that reason, a third analysis was undertaken.

\(^{32}\) Note that potential strategic hedges were not included in A2.
3.4.3 Analysis A3

Analysis A3, the results of which are presented in section 4.3 of chapter 4, was performed in order to overcome the limitations presented in A1 and A2. Analysis A3 made use of a more comprehensive list of 130 potentially high-frequency lexical hedges drawn from findings in A1 as well as examination of the literature (Bhatia et al., 2004; Salager-Meyer, 1997; Hyland, 1996a). Bhatia et al.'s (2004) original list was refined somewhat as their list included lexical items that can indicate not only uncertainty, but also certainty (must, cannot, conclude, confirm, conclusion, requirement, obvious, definite, certainly, definitely). Those items expressing certainty were eliminated as they do not express a hedge. In addition, items which could express a hedge in general English, but more often in legal English have a specific, technical meaning (evidence, alleged, question, claim, reasonable, doubt) were also eliminated as illustrated by the following examples:

(4) We have never questioned the sufficiency of circumstantial evidence in support of a criminal conviction, even though proof beyond a reasonable doubt is required. Desert Palace, Inc. v. Costa (2002: 100)

(5) Thus, a claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take. Norton v. Southern Utah Wilderness Alliance (2004: 56)

33 Note that analysis A3 did not include strategic hedges.
Moreover, not all modal verbs were included on the enlarged match list. Rather only the five epistemic modals identified in 2.3.1, ‘would’, ‘could’, ‘may’, ‘might’ and ‘should’ were included. To determine if a given modal verb found in the corpus was deontic or epistemic, a paraphrase strategy suggested by Coates (1983) was used. For instance, in legal texts ‘may’ can often have a deontic value connected to discretionary power which can be paraphrased ‘legally entitled’. Epistemically, ‘may’ can be translated as ‘perhaps’ or ‘believe’. The example below (6) can be paraphrased as in (6a), but not as in (6b):

(6) Second, once one takes into account the premium associated with a controlling interest in a firm, the Roe proposal may systematically undercompensate junior interests and overcompensate senior interests (Adler and Ayres, 2012: 145).

(6a) Perhaps the Roe proposal systematically undercompensates junior interests

* (6b) The Roe proposal is legally entitled to systematically undercompensate junior interests.

Not only was an enlarged match list of potential hedges used in A3, but also a much larger corpus of articles and opinions was used, consisting of roughly four million tokens for each genre thus reaching a total of approximately eight million tokens. Examples from both sub-corpora pertained to the time period of 1998-2004. However, articles from the best law schools could be readily accessed online when A3 was carried out (unlike when A1 was carried out). Therefore, articles were taken from the eight U.S. law schools which have
consistently appeared at the top of the U.S. News and World Report Law School Rankings: Yale University, Harvard University, Stanford University, Columbia University, University of Chicago, New York University, University of California Berkeley, and University of Michigan. The U.S. News and World Report ranking is the most widely cited of law school rankings.

The enlarged list of potential hedges was lemmatized and loaded onto the WordList function of WordSmith Tools 6.0 (Scott, 2013) as the match list file. Results were then color-coded according to part of speech. In addition, the Concord function of WordSmith Tools 6.0 (Scott, 2013) was used for checking the context of random potential hedges to verify if they were being used as such, and for extracting examples.

Analysis A3 allowed for a more complete picture of potential hedges to emerge. Baker (2010: 94) lists three clear advantages of corpus-based analyses. Firstly, concordancing software programs such as WordSmith Tools give researchers access to linguistic patterns and trends quickly and accurately. This allows researchers to confirm or refute hypotheses that would have otherwise been impossible. Finally, since concordancing tools allow researchers to quantify linguistic patterns, more solid conclusions about use of hedging in legal language can be reached.
Nevertheless, several criticisms have been levelled at corpus-based analyses, two of which were of relevance to the proposed methodology of the current study. Such a large corpus entailed extensive results whose complete verification using the Concord function of WordSmith Tools 6.0 (Scott, 2013) became unfeasible. The first criticism is that concordancing software encourages an atomized, bottom-up investigation of the corpus data, which runs counter to the top-down, process-based analysis common to a genre approach (Swales 2002). The ESP genre approach takes as a starting point the macrostructure of the text, focusing on larger units of language rather than lexico-grammatical patterning at sentence level.

A second criticism is that corpus-based analyses using concordancing software do not take into account the communicative context in which a sample of language is created (Widdowson, 1998). This is particularly problematic when analyzing pragmatic features of a text, which necessarily must be related to the socio-cultural context (Flowerdew, 2005). In view of these criticisms the corpus was down-sized and a final analysis was performed.
3.4.4 Analysis A4

It is with the knowledge and experience gained from the three preliminary analyses A1, A2 and A3 that a more manageable corpus of 1,269,580 tokens was used for analysis A4, that is, Supreme Court opinions: 600,597 tokens, and law review articles: 668,983 tokens. These were taken from 2012 U.S. Supreme Court opinions, and articles published in 2012 in the five top law school reviews: Yale, Harvard, Stanford, Chicago and Colombia.

Meyer has asserted that “genuine hedging is much rarer in written academic discourse than might be expected from statistical counts of modal and similar expressions” (1997: 22). The only way to discover if this holds true for legal genres was to use a more manageable corpus in which the context of all instances could be checked and the true nature of a potential hedge verified.

Thus, while criticisms are often made about corpus studies based on decontextualized instances of text from large-scale corpora, reducing the corpus to a more manageable size in which instances can be seen in context became key. As Flowerdew explains,

…this criticism does not hold so much weight for those corpus-based investigations where the analyst is also in the privileged position of being a specialist informant. This is where I see the value of working with small, specialized corpora of EAP/ESP texts …where the analyst is probably also the compiler and does have familiarity with the wider socio-cultural context in which the text was created, or else has access to specialist informants in the area. The compiler-cum-analyst can therefore act as a kind of
mediating ethnographic specialist informant to shed light on the corpus data (2005: 329)

Flowerdew suggests, “Corpus data may not be completely devoid of contextual features” (2005: 329). Similarly, Aston notes that “It is much easier to interpret concordances or numerical data if you know exactly what texts a corpus consists of, since this allows a greater degree of top–down processing” (2002: 11). This is particularly true in the case of a specialized corpora, such as the ones chosen for the present study. In addition, the fact that CGA includes both ethnographic analyses and analysis of the institutional context allows for incidence of hedging to be linked to a wider context, overcoming, in part, Widdowson’s (1998) criticism above.

In Analysis A4, the enlarged 130-item list of potentially high-frequency lexical hedges drawn up and lemmatized for Analysis A3 was loaded onto the WordList function of WordSmith Tools 6.0 (Scott, 2013) as the match list file. Results were then color-coded according to part of speech. In addition, the Concord function of WordSmith Tools (Scott, 2013) was used to check the context of potential hedges to verify if they were being used as such, and for extracting examples.

Verifying true hedges was particularly important in the case of certain modal verbs and lexical verbs which can display epistemic and non-epistemic meanings. For example, as has been discussed above, ‘could’, ‘should’,
'would' and 'ought to' can all have deontic as well as epistemic values. In the case of lexical verbs, the sentences below illustrates just two items with their differing meaning.

(7) The majority may consider this scheme unwise. Adoptive Couple v. Baby Girl (2013)

(8) Social Security encouraged recipients to consider themselves members of the national political community (Tani, 2012: 377).

(9) We now consider whether that coverage formula is constitutional in light of current conditions. Shelby County, Alabama v. Holder (2013)

(10) The SEC required by law to consider in its deliberations over proposed rules the effect they will have on “efficiency, competition, and capital formation (Stratmann and Verret, 2012: 1446).

Examples (7) and (8) demonstrate epistemic use of ‘consider’. In (7), consider can be taken to mean ‘regard someone or something to have a specific quality’, and (8) means ‘believe to be’. Subjectivity, lack of full commitment to the truth value of the proposition, and uncertainty are inherent in (7) and (7). Examples (9) and (10) however illustrate non-epistemic use of ‘consider’. In (9), ‘consider’ can mean ‘think about something carefully especially in order to make a decision’ while in (10) it can mean ‘take into account’.

Analysis of the results of A4 are presented in Chapters 5 and 6, chapter 5 focusing on modal verbs and Chapter 6 focusing on lexical verbs. First,
however, the following chapter presents the results of all the analyses carried out.
CHAPTER 4: RESULTS
This study has set out to examine the frequency and role of verbal lexical hedging in two written legal genres, American law review articles and U.S. Supreme Court opinions. The aim of this chapter is to present the results of four comparative analyses of the phenomenon, including one qualitative and three quantitative analyses.

Section 4.1 reports the results of the first analysis (A1), which was qualitative in nature. The analysis was carried out on a small corpus of seven texts: three articles and four Supreme Court opinions comprising 30,000 and 18,000 tokens respectively. The seven representative texts were read, hedges were identified, and then subsequently coded according to Hyland’s (1996a) taxonomy. Thus, all hedges were divided into lexical and strategic varieties, and lexical hedges were further sub-divided according to their part of speech: modal verb, epistemic lexical verb, epistemic adjective, epistemic adverbial or epistemic noun. A preliminary list of potentially high frequency items used to signal hedging was drawn up34, and differences and similarities between the genres were noted. Initial conclusions were reached concerning realization of hedging in the two genres.

Section 4.2 presents the results of a second analysis (A2), the first of three quantitative analyses using WordSmith Tools 6.0. Using the same small corpus

34 This list included 47 lexical hedges and 17 strategic hedges.
of seven representative texts, the 47-item list of potentially high frequency lexical hedges\textsuperscript{35} drawn up after analysis A1 was loaded onto the WordList function of WordSmith Tools 6.0 as the match list file. The results were then color-coded according to part of speech. This allowed for the initial conclusions in A1 to be verified to some extent.

However, analysis A2 was deemed limited in scope; thus, another analysis was performed (A3), the results of which are presented in section 4.3. Analysis A3 made use of a more comprehensive list of potentially high-frequency lexical hedges\textsuperscript{36} drawn from findings in A1 as well as examination of the literature (Bhatia et al., 2004; Salager-Meyer, 1997; Hyland, 1996a). In addition, a much larger corpus of articles and opinions was used, consisting of roughly four million tokens for each genre thus reaching a total of approximately eight million tokens. The enlarged list was lemmatized and loaded onto the WordList function of WordSmith Tools 6.0 as the match list file. Results were then color-coded according to part of speech. In addition, the Concord function of WordSmith Tools was used for checking the context of random potential hedges to verify if they were being used as such, and for extracting examples.

\textsuperscript{35} Note that potential strategic hedges were not included in A2.

\textsuperscript{36} Note that analysis A3 did not include strategic hedges.
Chapter 4: Results

Analysis A3 allowed for a more complete picture of potential hedges to emerge. However, such a large corpus entailed extensive results which made complete verification of potential hedges unfeasible. Not all potential hedges acted as such in context. Some potential hedges, such as the modal ‘may’ to take but one example, can have both deontic and epistemic value. To differentiate true hedges, epistemic ‘may’ in this case, from non-hedges such as deontic ‘may’, it was necessary to look at each result in context using the Concord function. This was untenable when faced with nearly 10,000 as in the case of ‘may’.

Nevertheless, while results from the three preliminary analyses, A1, A2 and A3 were not completely reliable or verifiable, the analyses served two important purposes. First, they allowed for initial conclusions to be reached concerning the role and realization of hedging in the two sub-corpora. Second, and perhaps most importantly, they allowed for an optimal methodology to be explored and refined with a view to ensuring reliability of any results garnered. It is with the knowledge and experience gained from the three preliminary analyses presented here that a more manageable corpus of 1,269,580 tokens\(^{37}\) was used for analysis A4.

---

\(^{37}\) That is, Supreme Court opinions: 600,597 tokens, and law review articles: 668,983 tokens.
As it became apparent that verbal hedging was the most frequent in the two genres, it became the focus of this study. Consequently, analysis and discussion of the results of A4 concerning modal verbs will be presented in detail in Chapter 5, while lexical verbs will be addressed in depth in Chapter 6.

### 4.1 Analysis A1: Qualitative analysis of a small corpus

This section presents the results of the qualitative analysis (A1) of seven representative texts, three law review articles and four Supreme Court opinions comprising 30,000 and 18,000 tokens respectively. Initial reading of the corpora in search of lexico-grammatical items which could potentially signal a hedge suggested that hedging was realized in the two genres differently in terms of both range of items, reflected in Figure 4.1.1, as well as their frequency of use.

Range of lexico-grammatical items used to signal hedging appeared to be much more limited in Supreme Court opinions than in law review articles. While both modal and lexical verbal hedging were found in the corpus of law review articles, there were few instances of verbal hedging of any type in U.S. Supreme Court opinions. In fact, though there were three modal verbs in the Supreme Court opinions, actual incidence of epistemic modality was extremely restricted.
In addition, frequency of hedging appeared to be far greater in law review articles than in Supreme Court opinions. However, careful reading of all of the articles led to the conclusion that incidence of hedging was higher in some articles than in others. Perhaps this is due to the subject matter of the article, or perhaps it “depends on such factors as [the addressee’s] position within the community, the potential readership, and even the writers' personalities…” (Markkanen and Schröder, 1997: 10).

<table>
<thead>
<tr>
<th>LEXICAL HEDGES</th>
<th>U.S. SUPREME COURT OPINIONS</th>
<th>LAW REVIEW ARTICLES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Modal Verbs</strong></td>
<td>Could</td>
<td>May</td>
</tr>
<tr>
<td><strong>Lexical Verbs</strong></td>
<td>Seem</td>
<td>Suggest</td>
</tr>
<tr>
<td><strong>Adverbs</strong></td>
<td>Allegedly</td>
<td>Presumptively</td>
</tr>
<tr>
<td></td>
<td>Generally</td>
<td>Somewhat</td>
</tr>
<tr>
<td></td>
<td>Possibly</td>
<td>Virtually</td>
</tr>
<tr>
<td></td>
<td>Presumably</td>
<td>In that</td>
</tr>
<tr>
<td><strong>Adjectives</strong></td>
<td>So-called</td>
<td>Unclear</td>
</tr>
<tr>
<td><strong>Nouns</strong></td>
<td>Evidence</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Chapter 4: Results

### STRATEGIC HEDGES

<table>
<thead>
<tr>
<th>Prepositional phrases</th>
<th>Concessive coordinators</th>
<th>Negation</th>
</tr>
</thead>
<tbody>
<tr>
<td>- While we do not dispute the common sense of this approach…</td>
<td>- Although either reading creates incongruities…</td>
<td>- While we do not dispute the common sense of this approach…</td>
</tr>
<tr>
<td>- Although we have no cause to doubt respondents’ assertion that…</td>
<td>- In Congress’ view,</td>
<td>- In Congress’ view,</td>
</tr>
<tr>
<td>- In general</td>
<td>- For all we know,</td>
<td>- For all we know,</td>
</tr>
<tr>
<td>- For purposes of the appeal,</td>
<td>- In the context of safety and administrative regulations,</td>
<td>- In the context of safety and administrative regulations,</td>
</tr>
<tr>
<td>- In certain limited circumstances,</td>
<td>- In theory</td>
<td>- In theory</td>
</tr>
<tr>
<td>- With limited exceptions,</td>
<td>- In part</td>
<td>- In part</td>
</tr>
<tr>
<td>- In fact</td>
<td>- In fact</td>
<td>- In fact</td>
</tr>
</tbody>
</table>

Furthermore, in addition to lexical and modal verbs, other lexical items, most notably adverbs and adjectives, also signaled hedging in the law review articles. By contrast, instances of non-verbal hedging in the U.S. Supreme Court opinions were generally signaled in one of three ways: prepositional phrases, adverbial clauses introduced by the concessive coordinators ‘while’ and ‘although’ or negation.

Prepositional phrases appeared to commonly be formed by simple (for, in, to) or complex (especially two-word e.g. due to) prepositions whose completable element is a noun which can be modified by an attenuating adjective such as ‘certain’ or ‘limited’.
Chapter 4: Results


Four of the prepositional phrases\(^{38}\) used in Supreme Court opinions seem to serve the function of limiting the context or the circumstances in which a rule or decision might apply. Similar prepositional phrases did not seem to appear in law review articles. Use of such expressions as ‘in Congress’ view’ and ‘to the best of the author’s awareness’ could indicate that depersonalization is a key hedging strategy used in both genres.\(^{39}\)

Sentence initial clauses beginning with a concessive coordinator were used in conjunction with negation to present two contrasting ideas. In the following example, the justices claim not to dispute the basis of some previous approach to a question of law; however they seem to blame ‘the statute’ for not letting common sense prevail. Negation appeared to be used in sentences in which the subject is in the first person plural (we), again perhaps indicating depersonalization.

(2) While we do not dispute the common sense of this approach, the words of the statute do not permit it. Caron v. United States (1998: 313)

\(^{38}\) For purposes of the appeal, in the context of safety and administrative regulations, in certain limited circumstances, and with limited exceptions

\(^{39}\) It will be remembered that depersonalisation is a strategy which allows the writer to avoid direct reference to himself, and to distance himself from the responsibility inherent in the propositions which are expressed.
In summary, examination of the results of A1 allowed for some tentative conclusions to be reached:

1. There appears to be a higher incidence, in general, of hedging in law review articles than in Supreme Court opinions.

2. Lexical hedging seems more common and more varied in law review articles, being achieved through the use of a range of modal verbs, epistemic lexical verbs, epistemic adjectives and epistemic adverbs.

3. Lexical hedging seems much more limited in Supreme Court opinions, both in terms of range and frequency.

4. Strategic hedging appears to occur more commonly than lexical hedging in Supreme Court opinions, and is achieved by means of clauses initiated by concessive coordinators, prepositional phrases and negation.

5. Strategic hedging appears to be more limited in range in law review articles than in Supreme Court opinions.

While certain conclusions can be proposed based on this initial qualitative analysis, one issue that must be taken into consideration is that such an analysis is very limited in terms of the size of corpora used. Another issue to be addressed is that a qualitative analysis of this type relies purely on the researcher’s intuition and introspection for data gathering which, while important in the identification of hedges (Salager-Meyer, 1997), does introduce an element of subjectivity into the analysis. The validity of these initial, tentative conclusions require verification, then, using a larger, more representative corpus, as well as quantitative methods which could limit the degree of subjectivity inherent in any qualitative research. The question would be if a quantitative analysis of larger corpora using concordancing software would
bear the same results. The following section discusses the first quantitative analysis.
4.2 **Analysis A2: Quantitative analysis of a larger corpus**

This section presents the results of the first quantitative analysis of a large corpus using a list of potential lexical hedges drawn up after the initial qualitative analysis of a smaller corpus. For this analysis, A2, the corpus was enlarged to just over 8.5 million tokens. Based on the results obtained from the initial readings of the small corpora, a list of lexico-grammatical items potentially signaling a hedge was drawn up and categorized. This list, which appears in Figure 4.2 below, was then used as the match list in the WordList function of WordSmith Tools 6.0.

<table>
<thead>
<tr>
<th>Verbal Items</th>
<th>Lexical Verbs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Could</td>
<td>Appear</td>
</tr>
<tr>
<td>May</td>
<td>Seem</td>
</tr>
<tr>
<td>Might</td>
<td>Tend</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Modal Verbs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Could</td>
</tr>
<tr>
<td>May</td>
</tr>
<tr>
<td>Might</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Verbal Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allegedly</td>
</tr>
<tr>
<td>Almost</td>
</tr>
<tr>
<td>Apparently</td>
</tr>
<tr>
<td>Arguably</td>
</tr>
<tr>
<td>Essentially</td>
</tr>
<tr>
<td>Generally</td>
</tr>
<tr>
<td>Ideally</td>
</tr>
<tr>
<td>Maybe</td>
</tr>
<tr>
<td>Partly</td>
</tr>
<tr>
<td>Per se</td>
</tr>
<tr>
<td>Perhaps</td>
</tr>
<tr>
<td>Possibly</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alleged</td>
</tr>
<tr>
<td>Potential</td>
</tr>
<tr>
<td>Debatable</td>
</tr>
<tr>
<td>Doubtful</td>
</tr>
<tr>
<td>Imaginable</td>
</tr>
<tr>
<td>Likely</td>
</tr>
<tr>
<td>Possible</td>
</tr>
<tr>
<td>Uncertain</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nouns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attempt</td>
</tr>
<tr>
<td>Impression</td>
</tr>
<tr>
<td>Evidence</td>
</tr>
<tr>
<td>Mis-emphasis</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debatable</td>
</tr>
<tr>
<td>Doubtful</td>
</tr>
<tr>
<td>Imaginable</td>
</tr>
<tr>
<td>Likely</td>
</tr>
<tr>
<td>Possible</td>
</tr>
<tr>
<td>Potential</td>
</tr>
<tr>
<td>So-called</td>
</tr>
<tr>
<td>Uncertain</td>
</tr>
<tr>
<td>Unclear</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nouns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attempt</td>
</tr>
<tr>
<td>Impression</td>
</tr>
<tr>
<td>Evidence</td>
</tr>
<tr>
<td>Mis-emphasis</td>
</tr>
</tbody>
</table>

The number of instances of each of the lexical items on the list in the larger corpus of American law review articles and U.S. Supreme Court opinions was

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40 In this case, law review articles totalled 4,765,307 tokens and Supreme Court opinions totalled 3,792,543 tokens.
found using the WordList function of WordSmith Tools. The results were then
color-coded according to part of speech as follows.

The tables below show the most frequent hedges in the two genres, namely
those that appear at least 0.01% of the time in the corpus. The numerical
results in this section are used as an indication of frequency of specific lexical
items; however, clearly, concordancing tools cannot match human perception
when determining if a specific item is being used as a hedge in context. That is
why in a subsequent analysis, A4, the corpus was reduced to allow for each
instance of a potential hedge to be carefully read and verified in context.

<table>
<thead>
<tr>
<th>N</th>
<th>Word</th>
<th>Freq.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MAY</td>
<td>10657</td>
<td>0.22</td>
</tr>
<tr>
<td>2</td>
<td>COULD</td>
<td>5515</td>
<td>0.12</td>
</tr>
<tr>
<td>3</td>
<td>MIGHT</td>
<td>5371</td>
<td>0.11</td>
</tr>
<tr>
<td>4</td>
<td>LIKELY</td>
<td>2778</td>
<td>0.06</td>
</tr>
<tr>
<td>5</td>
<td>EVIDENCE</td>
<td>2641</td>
<td>0.06</td>
</tr>
<tr>
<td>6</td>
<td>GENERALLY</td>
<td>2429</td>
<td>0.05</td>
</tr>
<tr>
<td>7</td>
<td>POSSIBLE</td>
<td>1647</td>
<td>0.03</td>
</tr>
<tr>
<td>8</td>
<td>POTENTIAL</td>
<td>1505</td>
<td>0.03</td>
</tr>
<tr>
<td>9</td>
<td>PERHAPS</td>
<td>1344</td>
<td>0.03</td>
</tr>
<tr>
<td>10</td>
<td>SOME TIMES</td>
<td>1133</td>
<td>0.02</td>
</tr>
<tr>
<td>11</td>
<td>SUGGEST</td>
<td>902</td>
<td>0.02</td>
</tr>
<tr>
<td>12</td>
<td>SEEM</td>
<td>873</td>
<td>0.02</td>
</tr>
<tr>
<td>13</td>
<td>ALMOST</td>
<td>700</td>
<td>0.01</td>
</tr>
<tr>
<td>14</td>
<td>APPEAR</td>
<td>585</td>
<td>0.01</td>
</tr>
<tr>
<td>15</td>
<td>ATTEMPT</td>
<td>559</td>
<td>0.01</td>
</tr>
<tr>
<td>16</td>
<td>TYPICALLY</td>
<td>554</td>
<td>0.01</td>
</tr>
<tr>
<td>17</td>
<td>TEND</td>
<td>495</td>
<td>0.01</td>
</tr>
<tr>
<td>18</td>
<td>USUALLY</td>
<td>485</td>
<td>0.01</td>
</tr>
</tbody>
</table>

Figure 4.3: A2: Lexical hedges in law review articles
Chapter 4: Results

<table>
<thead>
<tr>
<th>N</th>
<th>Word</th>
<th>Freq.</th>
<th>%</th>
<th>Texts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MAY</td>
<td>8040</td>
<td>0.17</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>EVIDENCE</td>
<td>4207</td>
<td>0.09</td>
<td>13</td>
</tr>
<tr>
<td>3</td>
<td>COULD</td>
<td>3880</td>
<td>0.08</td>
<td>13</td>
</tr>
<tr>
<td>4</td>
<td>MIGHT</td>
<td>2105</td>
<td>0.04</td>
<td>13</td>
</tr>
<tr>
<td>5</td>
<td>ALLEGED</td>
<td>926</td>
<td>0.02</td>
<td>13</td>
</tr>
<tr>
<td>6</td>
<td>LIKELY</td>
<td>902</td>
<td>0.02</td>
<td>13</td>
</tr>
<tr>
<td>7</td>
<td>GENERALLY</td>
<td>850</td>
<td>0.02</td>
<td>13</td>
</tr>
<tr>
<td>8</td>
<td>POSSIBLE</td>
<td>652</td>
<td>0.01</td>
<td>13</td>
</tr>
<tr>
<td>9</td>
<td>POTENTIAL</td>
<td>637</td>
<td>0.01</td>
<td>13</td>
</tr>
</tbody>
</table>

Figure 4.4: A2: Lexical hedges in Supreme Court opinions

It becomes immediately apparent that law review articles make use of twice as many lexical items, with a .01% or more degree of frequency, to signal hedging as Supreme Court opinions. That is there are 18 items which are frequently used in law review articles, while only nine in Supreme Court opinions. In addition, while both genres seem to show a predilection for the use of modal verbs and epistemic adjectives to signal hedging, law review articles also make use of epistemic adverbials and lexical verbs as well. Thus, one of the three conclusions concerning lexical hedges which was reached by a qualitative analysis of a small corpora (A1) appears valid:

- Lexical hedging seems more common and more varied in law review articles than in Supreme Court opinions, being achieved through a range of modal verbs, epistemic lexical verbs, epistemic adjectives and epistemic adverbs.
Chapter 4: Results

It now becomes interesting to determine if the other conclusions reached in the qualitative analysis A1 are equally valid. A comparison of number of hedges of each type yielded the following results, seen in Figure 4.5.

<table>
<thead>
<tr>
<th>Hedge type</th>
<th>Law review articles</th>
<th>Supreme Court opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per 10,000 words</td>
<td>Raw total</td>
</tr>
<tr>
<td>Modal verbs</td>
<td>45</td>
<td>21,543</td>
</tr>
<tr>
<td>Adverbials</td>
<td>14</td>
<td>6,645</td>
</tr>
<tr>
<td>Adjectives</td>
<td>12</td>
<td>5,930</td>
</tr>
<tr>
<td>Lexical verbs</td>
<td>7</td>
<td>3,414</td>
</tr>
<tr>
<td>Nouns</td>
<td>6</td>
<td>2,641</td>
</tr>
<tr>
<td>Total</td>
<td>84</td>
<td>40,173</td>
</tr>
</tbody>
</table>

Figure 4.5: A2 Statistically significant (.01%+) lexical hedges

In this case, a second conclusion reached in A1 seems valid as there is nearly 30% more lexical hedges in the law review articles (40,173 or 84 hedges per 10,000 words) as in the Supreme Court opinions (21,349 or 56 hedges per 10,000 words). Thus, there is a higher incidence, in general, of hedging in law review articles than in Supreme Court opinions, and as a result two more conclusions reached in section 4.1, based on analysis A1, seem true:

- There appears to be a higher incidence, in general, of lexical hedging in law review articles than in Supreme Court opinions.
- Lexical hedging seems much more limited in Supreme Court opinions, both in terms of range and frequency.
Chapter 4: Results

It is also interesting to examine the role each category of lexical verb plays in the two genres. This is illustrated in Figure 4.1 below by using a pie chart which shows the proportion of use of each category of item.

![Pie chart](image)

**Figure 4.6: A2 Lexical hedges in terms of percentage of use**

In terms of use of epistemic adjectives as hedges, there is no difference between the two genres. However, perhaps due to the lack of variation in lexico-grammatical items signaling hedges, Supreme Court opinions make greater use of modal verbs as these account for 66% of all hedges as opposed to 54%. This is contrary to what was found in the analysis A1 in which it was noted that there appeared to be a low incidence of both modal verbs and epistemic adjectives in Supreme Court opinions. Nevertheless, as predicted in A1, there are significant differences between the two genres in terms of use of both epistemic adverbials and epistemic lexical verbs.
But, perhaps the most interesting difference between the two genres can be seen in the use of epistemic nouns with these accounting for 20% of all lexical hedges in the Supreme Court opinions, but only 7% of all lexical hedges in the law review articles. In addition, this difference appears to be based on one noun in particular: ‘evidence’. Perhaps this can be explained by the fact that ‘evidence’ is only occasionally used to convey epistemic meaning in legal writing, as below:

(3) There is some evidence that local authorities sometimes invoke...Tenth Amendment arguments to avoid the heightened responsibilities (Thomas, 1999).

Closer inspection of the corpora using the Concord function of WordSmith Tools indicated that ‘evidence’ is much more frequently used in a technical sense, non-epistemically, and is not a hedge (Bhatia, et al. 2004). Thus, the frequency of use of epistemic nouns in the two genres using the methods implemented in A2 appears erroneous. The following examples, the first from a law review article, and the second from a Supreme Court opinion, demonstrate a much more frequent, technical, non-epistemic use of ‘evidence’:

(4) More specifically, a habeas court should interpret § 2241 as authorizing the court to ask whether a rational military decisionmaker could have found by a preponderance of the evidence that the citizen-detainee is an enemy combatant (Fallon and Meltzer, 2007: 2104).
(5) In holding that the evidence was insufficient to sustain the jury’s verdict, the Fifth Circuit ignored this evidence, as well as the evidence supporting Reeves’ prima facie case, and instead confined its review of the evidence favoring Reeves to that showing that Chesnut had directed derogatory, age-based comments at Reeves, and that Chesnut had singled him out for harsher treatment than younger employees. Reeves v. Sanderson Plumbing (2000)

Due to this revelation, two decisions were made with a view to carrying out further analysis of the corpora using corpus tools. First, it was decided that the list of lexico-grammatical items potentially signaling a hedge which would be sought in the corpora would be reevaluated. To begin with, ‘evidence’ and similar technical words would no longer be included on the list in subsequent quantitative analyses. In addition, the list of potential hedges would be enlarged to encompass a larger variety of items from each category. This enlarged list was compiled by drawing from Bhatia et al. (2004: 231. See section 2.7.1) as well as Salager-Meyer (1997), Hyland (1996a) and Coates (1983) The subsequent analysis of the corpus using this larger list of items became known as A3, and will be presented in the following section 4.3.

In summary, while the three main trends concerning lexical hedges which were identified in the qualitative analysis A1 seemed to be true upon quantitative analysis, other observations did not seem valid, especially those concerning
the role that certain word classes play in the two genres. Analysis A3 attempted to rectify these inaccuracies.
4.3 Analysis A3: Second quantitative analysis of a larger corpus

It was decided that perhaps the list of potential hedges derived from the initial qualitative analysis of the small corpora (A1) was unduly limited. Thus, drawing from Bhatia et al. (2004), Salager-Meyer (1997), Hyland (1996a) and Coates (1983) a more extensive list was drawn up.\(^\text{41}\)

<table>
<thead>
<tr>
<th>MODAL VERBS</th>
<th>Should</th>
<th>May</th>
<th>Ought</th>
<th>Would</th>
</tr>
</thead>
<tbody>
<tr>
<td>Could</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Might</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EPISTEMIC LEXICAL VERBS</th>
<th>EPISTEMIC NOUNS</th>
<th>EPISTEMIC ADJECTIVES</th>
<th>EPISTEMIC ADVERBS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allege</td>
<td>Allegation</td>
<td>Alleged</td>
<td>Allegedly</td>
</tr>
<tr>
<td>Appear</td>
<td>Argument</td>
<td>Apparent</td>
<td>Almost</td>
</tr>
<tr>
<td>Argue</td>
<td>Assumption</td>
<td>Arguable</td>
<td>Apparently</td>
</tr>
<tr>
<td>Assume</td>
<td>Belief</td>
<td>(Un) certainty</td>
<td>Approximately</td>
</tr>
<tr>
<td>Believe</td>
<td>Chance</td>
<td>(Un) clear</td>
<td>Arguably</td>
</tr>
<tr>
<td>Claim</td>
<td>Estimate</td>
<td>Debatable</td>
<td>Essentially</td>
</tr>
<tr>
<td>Consider</td>
<td>Impression</td>
<td>Doubtful</td>
<td>Generally</td>
</tr>
<tr>
<td>Depend</td>
<td>Likelihood</td>
<td>General</td>
<td>Ideally</td>
</tr>
<tr>
<td>Doubt</td>
<td>(im)possibility</td>
<td>Imaginable</td>
<td>In that</td>
</tr>
<tr>
<td>Estimate</td>
<td>(im)probability</td>
<td>(Un) likely</td>
<td>Maybe</td>
</tr>
<tr>
<td>Expect</td>
<td>Mis-emphasis</td>
<td>(Im)possible</td>
<td>Partly</td>
</tr>
<tr>
<td>Indicate</td>
<td>Suggestion</td>
<td>Potential</td>
<td>Per se</td>
</tr>
<tr>
<td>Infer</td>
<td></td>
<td>(Im)probable</td>
<td>perhaps</td>
</tr>
<tr>
<td>(not) know</td>
<td></td>
<td>Purported</td>
<td>possibly</td>
</tr>
<tr>
<td>(It is (not)) known</td>
<td></td>
<td>Questionable</td>
<td>Potentially</td>
</tr>
<tr>
<td>Note</td>
<td>Note</td>
<td>So-called</td>
<td>Presumably</td>
</tr>
<tr>
<td>Predict</td>
<td>Note</td>
<td>Unclear</td>
<td>Presumptively</td>
</tr>
<tr>
<td>Presume(d)</td>
<td>Note</td>
<td>Virtual</td>
<td>Probably</td>
</tr>
<tr>
<td>Propose</td>
<td>Note</td>
<td></td>
<td>Relatively</td>
</tr>
<tr>
<td>Report</td>
<td>Note</td>
<td></td>
<td>Roughly</td>
</tr>
<tr>
<td>Seem</td>
<td>Note</td>
<td></td>
<td>Somewhat</td>
</tr>
<tr>
<td>Speculate</td>
<td>Note</td>
<td></td>
<td>Somehow</td>
</tr>
<tr>
<td>Suggest</td>
<td>Note</td>
<td></td>
<td>Sometimes</td>
</tr>
<tr>
<td>Tempt</td>
<td>Note</td>
<td></td>
<td>Theoretically</td>
</tr>
<tr>
<td>Tend</td>
<td>Note</td>
<td></td>
<td>Typically</td>
</tr>
<tr>
<td>Think</td>
<td>Note</td>
<td></td>
<td>Usually</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Whenever</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Virtually</td>
</tr>
</tbody>
</table>

Figure 4.7 Enlarged list of potential lexical hedges

\(^{41}\) Similarly to ‘evidence’, other items on Bhatia et al.’s (2004) list were found to be used non-epistemically in the corpora, and were subsequently excluded from the list of search terms. These items could express a hedge in general English, but in legal English have a specific, technical meaning and included ‘question’, ‘claim’, and ‘doubt’. See 3.4.3
The list was lemmatized and loaded on to the Word List function of WordSmith Tools, and matches recorded on tables below which show items that appear at least 0.01% of the time in the corpora.

<table>
<thead>
<tr>
<th>N</th>
<th>Word</th>
<th>Freq.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>WOULD</td>
<td>14180</td>
<td>0.30</td>
</tr>
<tr>
<td>2</td>
<td>MAY</td>
<td>10657</td>
<td>0.22</td>
</tr>
<tr>
<td>3</td>
<td>SHOULD</td>
<td>5662</td>
<td>0.12</td>
</tr>
<tr>
<td>4</td>
<td>COULD</td>
<td>5515</td>
<td>0.12</td>
</tr>
<tr>
<td>5</td>
<td>MIGHT</td>
<td>5371</td>
<td>0.11</td>
</tr>
<tr>
<td>6</td>
<td>ARGUE</td>
<td>3245</td>
<td>0.07</td>
</tr>
<tr>
<td>7</td>
<td>SUGGEST</td>
<td>3088</td>
<td>0.06</td>
</tr>
<tr>
<td>8</td>
<td>LIKELY</td>
<td>2778</td>
<td>0.06</td>
</tr>
<tr>
<td>9</td>
<td>GENERAL</td>
<td>2756</td>
<td>0.06</td>
</tr>
<tr>
<td>10</td>
<td>CONSIDER</td>
<td>2654</td>
<td>0.06</td>
</tr>
<tr>
<td>11</td>
<td>SEEM</td>
<td>2279</td>
<td>0.05</td>
</tr>
<tr>
<td>12</td>
<td>THINK</td>
<td>2185</td>
<td>0.05</td>
</tr>
<tr>
<td>13</td>
<td>ASSUME</td>
<td>1721</td>
<td>0.04</td>
</tr>
<tr>
<td>14</td>
<td>POSSIBLE</td>
<td>1647</td>
<td>0.03</td>
</tr>
<tr>
<td>15</td>
<td>BELIEVE</td>
<td>1609</td>
<td>0.03</td>
</tr>
<tr>
<td>16</td>
<td>EXPECT</td>
<td>1595</td>
<td>0.03</td>
</tr>
<tr>
<td>17</td>
<td>POTENTIAL</td>
<td>1505</td>
<td>0.03</td>
</tr>
<tr>
<td>18</td>
<td>PERHAPS</td>
<td>1344</td>
<td>0.03</td>
</tr>
<tr>
<td>19</td>
<td>APPEAR</td>
<td>1317</td>
<td>0.03</td>
</tr>
<tr>
<td>20</td>
<td>PROPOSE</td>
<td>1316</td>
<td>0.03</td>
</tr>
<tr>
<td>21</td>
<td>SOMETIMES</td>
<td>1133</td>
<td>0.02</td>
</tr>
<tr>
<td>22</td>
<td>DEPEND</td>
<td>1008</td>
<td>0.02</td>
</tr>
<tr>
<td>23</td>
<td>POSSIBILITY</td>
<td>900</td>
<td>0.02</td>
</tr>
<tr>
<td>24</td>
<td>RELATIVELY</td>
<td>820</td>
<td>0.02</td>
</tr>
<tr>
<td>25</td>
<td>PROBABILITY</td>
<td>807</td>
<td>0.02</td>
</tr>
<tr>
<td>26</td>
<td>TEND</td>
<td>744</td>
<td>0.02</td>
</tr>
<tr>
<td>27</td>
<td>INDICATE</td>
<td>719</td>
<td>0.02</td>
</tr>
<tr>
<td>28</td>
<td>ALMOST</td>
<td>700</td>
<td>0.01</td>
</tr>
<tr>
<td>29</td>
<td>ASSUMPTION</td>
<td>650</td>
<td>0.01</td>
</tr>
<tr>
<td>30</td>
<td>ATTEMPT</td>
<td>559</td>
<td>0.01</td>
</tr>
<tr>
<td>31</td>
<td>TYPICALLY</td>
<td>554</td>
<td>0.01</td>
</tr>
<tr>
<td>32</td>
<td>USUALLY</td>
<td>485</td>
<td>0.01</td>
</tr>
<tr>
<td>33</td>
<td>PROBALLY</td>
<td>480</td>
<td>0.01</td>
</tr>
</tbody>
</table>

Figure 4.8: A3 Lexical hedges in law review articles

---

42 Once lemmatized the enlarged list totaled 147 items.
Upon examination of the above tables, it can be seen that modal verbs continue to play a significant role in hedging in both genres. In addition, epistemic adjectives appear to be involved in hedging as well, especially ‘likely’, ‘general’, ‘possible’ and ‘potential’. However, while in analysis A2 (see section 4.2) it appeared that lexical verbs did not play a role in hedging in Supreme Court opinions, here it is apparent that they are important in both genres. Epistemic adverbials continue to play a more significant role in law review articles than in Supreme Court opinions, with the notable exception of ‘perhaps’.
Chapter 4: Results

A comparison of number of hedges of each type yielded the following results, seen in Figure 4.9 below. It would appear that hedging is more widespread in both genres than was apparent in the first quantitative analysis. If it was originally thought that there were 84 hedges per 10,000 words in law review articles, and 56 hedges per 10,000 words in Supreme Court opinions, the table below shows 172 and 128 hedges per 10,000 words respectively. This is undoubtedly due to a greater number of potential hedges being sought and may lead to the conclusion that hedging could be considered wider spread still if more lexical items were considered. Still, there appears to be approximately 25% more hedging in law review articles than in Supreme Court opinions.

<table>
<thead>
<tr>
<th>Hedge type</th>
<th>Law review articles</th>
<th></th>
<th>Supreme Court opinions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per 10,000 words</td>
<td>Raw total</td>
<td>Per 10,000 words</td>
<td>Raw total</td>
</tr>
<tr>
<td>Modal verbs</td>
<td>87</td>
<td>41,385</td>
<td>68</td>
<td>25,792</td>
</tr>
<tr>
<td>Lexical verbs</td>
<td>50</td>
<td>24,039</td>
<td>39</td>
<td>14,878</td>
</tr>
<tr>
<td>Adjectives</td>
<td>18</td>
<td>8,686</td>
<td>19</td>
<td>7,107</td>
</tr>
<tr>
<td>Adverbs</td>
<td>12</td>
<td>5,516</td>
<td>1</td>
<td>385</td>
</tr>
<tr>
<td>Nouns</td>
<td>5</td>
<td>2,357</td>
<td>1</td>
<td>510</td>
</tr>
<tr>
<td>Total</td>
<td>172</td>
<td>81,983</td>
<td>128</td>
<td>48,672</td>
</tr>
</tbody>
</table>

Figure 4.10: A3: Statistically significant (.01%+) lexical hedges

As for analysis A2 (see section 4.2 above), this analysis, A3, also appears to corroborate the three tentative conclusions reached after a qualitative analysis (A1) of examples of the genre. First, lexical hedging seems more common and more varied in law review articles than in Supreme Court opinions, being
Chapter 4: Results

achieved through a range of modal verbs, epistemic lexical verbs, epistemic adjectives and epistemic adverbs. The one exception is epistemic adjectives, which appears to be slightly more frequent in Supreme Court opinions. Lexical hedging seems much more limited in Supreme Court opinions, both in terms of range and frequency. This is represented visually in the figure below.

![Figure 4.11: A3 Frequency of types of hedges in the corpora](image)

Second, overall, there appears to be a 30% higher incidence of lexical hedging in law review articles than in Supreme Court opinions with the exception of use of epistemic adjectives. This is represented visually in Figure 4.3.

![Figure 4.12: A3 Frequency of hedges per 10,000 words](image)
Both genres appear to rely heavily on modal verbs to convey uncertainty or lack of commitment as to the truth value of an utterance. However, proportionally, as illustrated in the pie charts below (Figure 4.4), modal verbs, lexical verbs and adjectives appear to play a more significant role in Supreme Court opinions than in law review articles, while the opposite is true when considering adverbs and nouns.

Omitting such nouns as ‘evidence’, ‘claim’, ‘question’ and ‘doubt’ has clearly influenced the results of analysis A3 as only 3% of all hedges in the law review articles and 1% of all hedges in the Supreme Court opinions were nouns. That is a marked difference from the findings in analysis A2 in which 7% and 20% of all hedges were found to be nouns in law review articles and Supreme Court opinions respectively. It is thought, however, that the results obtained by
rejecting such legal technical terms as potential hedges are more reliable, and
better reflect the use of hedging in the discourse.

Nevertheless, while refinement of research methods has led to more reliable
results concerning the word class of nouns, there are more challenges
presented by other word classes, modal verbs for example. The most frequent
modal to be found in both law review articles and Supreme Court opinions in
analysis A3 is ‘would’. Of course ‘would’ does not always express epistemic
meaning. For example, instances of ‘would’ in conjunction with ‘like’, ‘rather’
and ‘prefer’ were found in the corpora to indicate preferences, and these can
be easily omitted from the final count of instances.

In addition, ‘would’ can also feature in reported speech as the past of ‘will’, as
in, for example: I said I would help you. Thus, it can be used in a narrative
sense to report on court cases (Facchinetti, 2001). In fact, Facchinetti argues
that ‘while would is often used in the language of the courts, it is rarely used to
express tentativeness” (Facchinetti, 2001: 144). However, in order to
distinguish the use of ‘would’ in reported speech, and its use to express
tentativeness, it would be necessary to use the Concord function of WordSmith
to check the context of every instance of the use of ‘would’ which could be
laborious and time-consuming given that there are over 24,000 instances of
‘would’ in the corpus.
The same applies to ‘may’. ‘May’ and ‘might’, according to Hyland are often “considered prototypical hedges” (1998c:116), and indeed ‘may’ is the second most frequent modal verb used in both genres with a total of just over 17,500 instances. But, perhaps ‘may’ occurs so frequently in the corpora because it is a modal verb which appears to be used more frequently in legal English than in general English (Foley, 2001: 193). This is because in legal English ‘may’ can have a very specific deontic meaning of “conferring discretionary power, either directly or indirectly” (Williams, 2007:121). This seems particularly true in affirmative contexts (Williams, 2007), and when the subject is an entity such as ‘Congress’, ‘Government’, ‘State’ or ‘Court’, as well as ‘regulators’, ‘judge’, ‘party’ or ‘attorney’, for example, as in the following from a Supreme Court opinion:

(6) For representation of a benefits claimant at the administrative level, an attorney may file a fee petition or a fee agreement. Gisbrecht v. Barnhart (2002: 794)

Deontic may, in the legal sense, often collocates with verbs such as ‘bring (an action or suit)’ ‘impose’, ‘require’ or ‘exercise’. These collocates figure significantly more in Supreme Court opinions as in the example below:

(7) Our precedents make clear, however, that the “statutory maximum” for Apprendi purposes is

---

43 Foley bases this observation on the LOB and Brown Corpora and claims this is true of both ‘shall’ and ‘may’.
44 This use of ‘may’ in legal texts is stronger than what Hyland (1998c: 117) terms the ‘permission sense’ of may occasionally used in general English texts.
the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant. Blakely v. Washington (2004: 303)

Finally, deontic ‘may’ is often used in cases of intertextuality, when a statute or rule is alluded to, as in this example from a law review article:

(8) The authors discuss the harms of eminent domain and other sovereign powers by which the government may seize or regulate private property (Cardozo, 2007: 5).

Nevertheless, use of the Concord function of WordSmith tools showed that in both of the genres under study epistemic ‘may’ was also apparent as in the following example from a Supreme Court opinion in which ‘may’ signals a possibility:

(9) No matter how odd or deficient trial counsel’s performance may seem, that lawyer may have had a reason for acting as he did…. Or it may turn out that counsel’s overall performance was sufficient despite a glaring omission. Massaro v. United States (2003: 505)

In the above example, ‘may’ could be substituted with ‘perhaps’ as suggested by Coates (1983) and paraphrased:

(9a) No matter how odd or deficient trial counsel’s performance perhaps seems, that lawyer perhaps has had a reason for acting as he did…or perhaps counsel’s overall performance was sufficient despite a glaring omission.
'Would' and 'may' are by no means the only modal verbs in the potential hedge list which can carry both an epistemic and a deontic value. 'Could' and 'should' can have both epistemic and deontic meanings as well.\textsuperscript{45} Yet, when there are so many instances of these items, it is not always feasible to check the context of each one to determine how it is being used. Validity of results can suffer as a consequence.

That is why it was decided that a final analysis should be performed making one further and important change to the research methodology. The list of potential hedges to serve as the match list in the WordList function of WordSmith tools was now set, but the current corpus, at over eight million tokens, was simply unmanageable. The corpus would be reduced to just over one million words which would allow it to retain its representativeness while at the same time be more practical.

\textsuperscript{45} 'Could' in the deontic sense signals past ability and can be paraphrased 'was able'. 'Should' used in the deontic sense can signal a suggestion or weak obligation, while in the epistemic sense it signals an expectation.
4.4 Analysis A4: Final quantitative analysis of lexical hedges

The procedure used in analysis A4 arose from the exploration and refinement of methodology carried out in analyses A1, A2 and A3. Specifically, a 134-item list of potentially high-frequency lexical hedges was drawn up and lemmatized (see table 4.3.1), and loaded onto the WordList function of WordSmith Tools 6.0 as the match list file. Matches were computed on a corpus of 1,269,580 tokens, and results were color-coded according to part of speech yielding:

<table>
<thead>
<tr>
<th>N</th>
<th>Word</th>
<th>Freq.</th>
<th>Lemmas</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>MAY</td>
<td>1185</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>COULD</td>
<td>686</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>SHOULD</td>
<td>498</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>GENERAL</td>
<td>345</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>MIGHT</td>
<td>303</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>ARGUE</td>
<td>299</td>
<td>argue[71] argued[85] argues[99] arguing[44]</td>
</tr>
<tr>
<td>11</td>
<td>LIKELY</td>
<td>157</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>POTENTIAL</td>
<td>95</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>ESSENTIAL</td>
<td>86</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>POSSIBLE</td>
<td>74</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>PROBABLE</td>
<td>69</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>PERHAPS</td>
<td>62</td>
<td></td>
</tr>
</tbody>
</table>

Figure 4.14: A4 Initial results, Supreme Court opinions

46 That is, the corpus comprised two sub-corpora: Supreme Court opinions: 600,597 tokens and law review articles: 668,983 tokens.
After these initial results were obtained, each instance of a potential hedge was checked in context to verify that it was being used as such. Results of the contextual analysis, refined accordingly, will be discussed in the following sub-
sections. As the focus of this study is on verbal lexical hedging, modal verbs will be discussed in 4.4.1 and lexical verbs in 4.4.2.

### 4.4.1 Modal verbs

While the initial results presented above seemed promising, they would have to be refined through contextual verification. This was particularly true when looking at the modal verbs which could have either epistemic or deontic value depending on the context. Thus, using the Concord function of WordSmith Tools 6.0, the context in which each of the modal verbs were found was checked to determine if its use was deontic or epistemic. After such contextual analysis, the number of true epistemic modals was verified. The table below presents the number of modals found in the two sub-corpora before and after the contextual analysis. Refined results reflecting the true number of epistemic modals appears in bold.

<table>
<thead>
<tr>
<th>Modal verb</th>
<th>Law review articles</th>
<th>Supreme Court opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Initial results</td>
<td>Refined results</td>
</tr>
<tr>
<td>Would</td>
<td>1623</td>
<td>1609</td>
</tr>
<tr>
<td>May</td>
<td>1438</td>
<td>1123</td>
</tr>
<tr>
<td>Could</td>
<td>782</td>
<td>683</td>
</tr>
<tr>
<td>Should</td>
<td>817</td>
<td>45</td>
</tr>
<tr>
<td>Might</td>
<td>1046</td>
<td>1046</td>
</tr>
<tr>
<td>TOTAL</td>
<td>5,706</td>
<td>4,506</td>
</tr>
</tbody>
</table>

Figure 4.16: A4 Refined results, epistemic modals
Thus, roughly one third of the modal verbs analyzed initially in A4 were found to be deontic in context rather than epistemic. In terms of epistemic value, the following table shows the true nature of the targeted modal verbs in the corpus in instances per 10,000 words:

<table>
<thead>
<tr>
<th>Epistemic modal</th>
<th>Law review articles</th>
<th>Supreme Court opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per 10,000 words</td>
<td>Per 10,000 words</td>
</tr>
<tr>
<td>Would</td>
<td>24.1</td>
<td>28.9</td>
</tr>
<tr>
<td>May</td>
<td>16.8</td>
<td>10</td>
</tr>
<tr>
<td>Could</td>
<td>10.2</td>
<td>8.9</td>
</tr>
<tr>
<td>Should</td>
<td>0.7</td>
<td>0.6</td>
</tr>
<tr>
<td>Might</td>
<td>15.6</td>
<td>5</td>
</tr>
<tr>
<td>TOTAL</td>
<td>67.4</td>
<td>53.4</td>
</tr>
</tbody>
</table>

Figure 4.17: A4 Epistemic modals per 10,000 words

Epistemic modal verbs are approximately 20% more frequent in law review articles in general. Upon consideration of each individual modal verb, it is apparent that the most popular modal, epistemic ‘would’, is more frequent in Supreme Court opinions than in law review articles. Epistemic ‘may’ and ‘might’ are significantly more frequent in law review articles than in Supreme Court opinions, however. Epistemic ‘could’ is used similarly in both genres, while frequency of epistemic ‘should’ is negligible.

---

47 37% of the targeted modal verbs in Supreme Court opinions and 26% of law review article modal verbs.
4.4.2 Lexical Verbs

Not only could modal verbs be checked in context to ascertain their epistemic value, but also items from other word classes could be verified as well. Each lexical verb may have several meanings, not all of which are epistemic. For example, ‘assume’ can mean:

- To think that something is true or probably true without knowing that it is true
- To begin (a role, duty, etc.) as a job or responsibility
- To take or begin to have (power, control, etc.) in a job or situation (Merriam-Webster, 2014).

These meanings can be illustrated with the following sentences:

- I assumed you knew, and that is why I didn’t tell you.
- I will assume the role of Course Director in October.
- He assumed the control of the army.

Clearly the first sentence expresses some epistemic value, as in lack of complete certainty, whereas the other two do not.

As a result of this polysemy, the context of all lexical verbs was verified and results refined. In addition, contextual analysis made it possible to eliminate such instances as the use of ‘thought’ as a noun, for example, instead of the past tense of ‘think’. The table below presents the number of lexical verbs

235
found in the two sub-corpora before and after the contextual analysis. Refined results reflecting the true number of epistemic lexical verbs appear in bold.

<table>
<thead>
<tr>
<th>Lexical verb</th>
<th>Law review articles</th>
<th>Supreme Court opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Raw total</td>
<td>Refined</td>
</tr>
<tr>
<td>Appear</td>
<td>222</td>
<td>193</td>
</tr>
<tr>
<td>Argue</td>
<td>714</td>
<td>482</td>
</tr>
<tr>
<td>Assume</td>
<td>159</td>
<td>149</td>
</tr>
<tr>
<td>Believe</td>
<td>230</td>
<td>222</td>
</tr>
<tr>
<td>Consider</td>
<td>427</td>
<td>59</td>
</tr>
<tr>
<td>Depend</td>
<td>144</td>
<td>139</td>
</tr>
<tr>
<td>Expect</td>
<td>150</td>
<td>53</td>
</tr>
<tr>
<td>Indicate</td>
<td>101</td>
<td>79</td>
</tr>
<tr>
<td>Predict</td>
<td>90</td>
<td>80</td>
</tr>
<tr>
<td>Propose</td>
<td>151</td>
<td>48</td>
</tr>
<tr>
<td>Seem</td>
<td>318</td>
<td>313</td>
</tr>
<tr>
<td>Suggest</td>
<td>436</td>
<td>391</td>
</tr>
<tr>
<td>Tend</td>
<td>126</td>
<td>121</td>
</tr>
<tr>
<td>Think</td>
<td>241</td>
<td>177</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3509</td>
<td>2506</td>
</tr>
</tbody>
</table>

Figure 4.18: A4 Refined results, lexical verbs

Thus, roughly one third of the lexical verbs analyzed initially in A4 were found to be non-epistemic in context rather than epistemic. In terms of epistemic value, the following table shows the true nature of the targeted lexical verbs in the corpus in instances per 10,000 words:

---

48 29% of the targeted lexical verbs in law review articles and 35% of lexical verbs in Supreme Court opinions were not epistemic.
When presented in order of frequency, it can be seen that ‘argue’, ‘suggest’, and ‘believe’ figure prominently in both sub-corpora accounting for 43% of all lexical verbs in law review articles and 52% of all lexical verbs in Supreme Court opinions. In addition, the sensorial verb ‘seem’ is prominent in law review articles, accounting for an additional 12.5% of all lexical verbs in this genre.

Taking into account the refined results of the modal and lexical verbs, lexical hedges in both sub-corpora can be compared. It is clear that, in general, there is nearly a 50% increase in frequency in use of lexical hedges in law review articles with 37.4 per 10,000 words, when compared to Supreme Court opinions with 19.9. This is shown in the table below.

<table>
<thead>
<tr>
<th>Lexical verb</th>
<th>Law review articles</th>
<th>Supreme Court opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per 10,000 words</td>
<td>Per 10,000 words</td>
</tr>
<tr>
<td>Appear</td>
<td>2.9</td>
<td>1.1</td>
</tr>
<tr>
<td>Argue</td>
<td>7.2</td>
<td>4.3</td>
</tr>
<tr>
<td>Assume</td>
<td>2.2</td>
<td>1.6</td>
</tr>
<tr>
<td>Believe</td>
<td>3.3</td>
<td>3.0</td>
</tr>
<tr>
<td>Consider</td>
<td>0.9</td>
<td>0.6</td>
</tr>
<tr>
<td>Depend</td>
<td>2.1</td>
<td>1.3</td>
</tr>
<tr>
<td>Expect</td>
<td>0.8</td>
<td>0.3</td>
</tr>
<tr>
<td>Indicate</td>
<td>1.2</td>
<td>0.8</td>
</tr>
<tr>
<td>Predict</td>
<td>1.2</td>
<td>----</td>
</tr>
<tr>
<td>Propose</td>
<td>0.7</td>
<td>0.2</td>
</tr>
<tr>
<td>Seem</td>
<td>4.7</td>
<td>1.0</td>
</tr>
<tr>
<td>Suggest</td>
<td>5.8</td>
<td>3.6</td>
</tr>
<tr>
<td>Tend</td>
<td>1.8</td>
<td>---</td>
</tr>
<tr>
<td>Think</td>
<td>2.6</td>
<td>2.1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>37.4</td>
<td>19.9</td>
</tr>
</tbody>
</table>

Figure 4.19: A4 Epistemic lexical verbs per 10,000 words

Chapter 4: Results
Chapter 4: Results

<table>
<thead>
<tr>
<th>Lexical verb</th>
<th>Law review articles</th>
<th>Per 10,000 words</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argue</td>
<td>482</td>
<td>7.2</td>
</tr>
<tr>
<td>Suggest</td>
<td>391</td>
<td>5.8</td>
</tr>
<tr>
<td>Seem</td>
<td>313</td>
<td>4.7</td>
</tr>
<tr>
<td>Believe</td>
<td>222</td>
<td>3.3</td>
</tr>
<tr>
<td>Appear</td>
<td>193</td>
<td>2.9</td>
</tr>
<tr>
<td>Think</td>
<td>177</td>
<td>2.6</td>
</tr>
<tr>
<td>Assume</td>
<td>149</td>
<td>2.2</td>
</tr>
<tr>
<td>Depend</td>
<td>139</td>
<td>2.1</td>
</tr>
<tr>
<td>Tend</td>
<td>121</td>
<td>1.8</td>
</tr>
<tr>
<td>Predict</td>
<td>80</td>
<td>1.2</td>
</tr>
<tr>
<td>Indicate</td>
<td>79</td>
<td>1.2</td>
</tr>
<tr>
<td>Consider</td>
<td>59</td>
<td>0.9</td>
</tr>
<tr>
<td>Expect</td>
<td>53</td>
<td>0.8</td>
</tr>
<tr>
<td>Propose</td>
<td>48</td>
<td>0.7</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>37.4</td>
</tr>
</tbody>
</table>

Figure 4.20: A4: Lexical verbs in order of frequency

However, results of the analysis of lexical verbs can be refined yet further. The table below indicates the true nature of the instances of verbs such as ‘argue’, ‘believe’, ‘propose’, ‘suggest’ and ‘think’ which can be both speculative and quotative. Again, each instance of a lexical verb was read and interpreted in context in order to make this distinction.

<table>
<thead>
<tr>
<th>Speculative</th>
<th>Deductive</th>
<th>Quotative</th>
<th>Sensorial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argue</td>
<td>Predict</td>
<td>Assume</td>
<td></td>
</tr>
<tr>
<td>Believe</td>
<td>Propose</td>
<td>Argue</td>
<td></td>
</tr>
<tr>
<td>Consider</td>
<td>Suggest</td>
<td>Believe</td>
<td></td>
</tr>
<tr>
<td>Depend</td>
<td>Tend</td>
<td>Indicate</td>
<td></td>
</tr>
<tr>
<td>Expect</td>
<td>Think</td>
<td>Propose</td>
<td></td>
</tr>
<tr>
<td>Indicate</td>
<td></td>
<td>Suggest</td>
<td></td>
</tr>
</tbody>
</table>

Figure 4.21: Categories of lexical verbs
In terms of frequency, ‘argue’, ‘suggest’, and ‘believe’ figure prominently in both sub-corpora accounting for 43% of all lexical verbs in law review articles and 52% of all lexical verbs in Supreme Court opinions. ‘Argue’, ‘believe’, and ‘suggest’ can pertain to either the speculative or the quotative category depending on the context. As can be seen in table 4.17 above, ‘argue’ is primarily a quotative verb in the two sub-corpora, while ‘believe’ and ‘suggest’ are primarily speculative.

Judgmental hedges predominated in law review articles while evidential hedges were more frequent in Supreme Court opinions.
Chapter 4: Results

Taking into account all the main lexical verbs appearing in the two genres, and considering all four categories of lexical verbs, a similar pattern is observed. Law review articles use lexical verbs more frequently as hedges particularly verbs in the speculative and sensorial categories. The difference in frequency of hedges is less significant in the quotative and deductive categories. The deductive category is the least represented in the two sub-corpora, but it is the only category in which number of hedges per 10,000 words is greater in Supreme Court opinions.

<table>
<thead>
<tr>
<th>Verb category</th>
<th>Law review articles Per 10,000 words</th>
<th>Supreme Court opinions Per 10,000 words</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speculative</td>
<td>17.7</td>
<td>8.5</td>
</tr>
<tr>
<td>Deductive</td>
<td>2.2</td>
<td>1.6</td>
</tr>
<tr>
<td>Quotative</td>
<td>9.9</td>
<td>7.8</td>
</tr>
<tr>
<td>Sensorial</td>
<td>7.6</td>
<td>2.7</td>
</tr>
</tbody>
</table>

Figure 4.24: A4 Categories of frequent lexical verbs

Perhaps this information can be better represented graphically.

Figure 4.25: A4 Graphical representation of categories of lexical verbs
It is also interesting to see the role each category plays within each genre:

<table>
<thead>
<tr>
<th></th>
<th>Law review articles</th>
<th>Supreme Court opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speculative</td>
<td>47%</td>
<td>8%</td>
</tr>
<tr>
<td>Quotative</td>
<td>27%</td>
<td>38%</td>
</tr>
<tr>
<td>Sensorial</td>
<td>6%</td>
<td>13%</td>
</tr>
<tr>
<td>Deductive</td>
<td>20%</td>
<td>41%</td>
</tr>
</tbody>
</table>

Figure 4.26: A4 Percentage of use of lexical verbs by category

As seen above, law review articles appear to use speculative lexical verbs most widely, indicating that writers are presenting information as opinion rather than fact. Supreme Court opinions, on the other hand, use quotative verbs to present second-hand information almost as frequently as they use speculative verbs. However, law review articles use sensorial lexical verbs more frequently, indicating that writers are presenting information based on their senses. Deductive verbs are used relatively infrequently in both genres, especially law review articles.
Chapter 4: Results

4.5 Summary: refined results for A4

When looking at all lexical hedges together, using refined results, it is clear that law review articles make use of 50% more hedges than Supreme Court opinions.

<table>
<thead>
<tr>
<th>Hedge type</th>
<th>Law review articles</th>
<th>Supreme Court opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per 10,000 words</td>
<td>Per 10,000 words</td>
</tr>
<tr>
<td>Modal verbs</td>
<td>67.4</td>
<td>53.4</td>
</tr>
<tr>
<td>Lexical verbs</td>
<td>37.4</td>
<td>20.9</td>
</tr>
<tr>
<td>Adjectives</td>
<td>22.0</td>
<td>13.8</td>
</tr>
<tr>
<td>Adverbs</td>
<td>10.0</td>
<td>1.0</td>
</tr>
<tr>
<td>Nouns</td>
<td>11.6</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Hedges</strong></td>
<td><strong>158.4</strong></td>
<td><strong>105.3</strong></td>
</tr>
</tbody>
</table>

Figure 4.27: A4 Comparison of hedge types

Visually, the following figure perhaps better illustrates the frequency of lexical hedge types which appear in the sub-corpora.

Figure 4.28: A4 Most frequent lexical items per 10,000 words
s was found in previous analyses, both genres appear to rely heavily on modal verbs to convey uncertainty or lack of commitment as to the truth value of an utterance. Proportionally, as lexical verbs appear to play a less significant role in Supreme Court opinions as compared to the analysis A3\textsuperscript{49}, modal verbs increase in importance. As in A2 and A3, epistemic adverbs and nouns are infrequent in Supreme Court opinions. Therefore, as postulated from the beginning in A1, hedging is more frequent and more varied in law review articles than in Supreme Court opinions.

Figure 4.29: A4 Lexical hedges in terms of percentage of use

In summary, while some conclusions which were postulated in A1, A2 and A3 were ratified by analysis A4, others were not. A new set of conclusions can be reached regarding lexical hedging in the corpus:

\textsuperscript{49} In A3 it appeared that lexical verbs accounted for 30\% of all hedges in Supreme Court opinions.
Chapter 4: Results

1. There appears to be a 50% higher incidence, in general, of hedging in law review articles than in Supreme Court opinions.

2. Lexical hedging seems more common and more varied in law review articles, being achieved through the use of a range of modal verbs, epistemic lexical verbs, epistemic adjectives and epistemic adverbs. That is, law review articles make use of both verbal and non-verbal hedging.

3. Verbal hedging, through both modal and lexical verbs, appears to be more significant in Supreme Court opinions than in law review articles. In particular, the use of modal verbs in Supreme Court opinions is notable.

The following two chapters will analyze the extent of, and function of verbal lexical hedging in the two genres. Chapter 5 will focus on modal verbs, while Chapter 6 will address lexical verbs.
CHAPTER 5:
ANALYSIS OF MODAL VERBS
The aim of this study is to examine the frequency and role of verbal lexical hedging in two written legal genres, American law review articles and U.S. Supreme Court opinions. To that end, four analyses were carried out on the corpus, with analysis A4 being considered the most reliable given that it allowed for results to be verified through analysis of context. This is essential as realization of a hedge often responds to the addresser’s personal intention but its interpretation as such ultimately depends on the addressee’s intuition, ability to understand the context in which the hedge was produced, and invocation of shared linguistic background knowledge. This is the first of two chapters which aim to analyze the results obtained from analysis A4. This chapter focuses on modal verbs, while Chapter 6 focuses on lexical verbs.

As was discussed in 2.3.1, based on Coates’ (1983) treatment of modal semantics, five epistemic modals were targeted in the two legal genres using WordSmith Tools: ‘would’, ‘may’, ‘might’, ‘could’ and ‘should’. In this chapter these modal verbs will be addressed in turn in sections 5.1, 5.2, 5.3, 5.4. and 5.5 respectively.

These five modals accounted for the majority of lexical items signaling hedging in both law review articles and Supreme Court opinions. Indeed, after results were refined through contextual analysis of the concordances, there were 67.4 instances of modal verbal hedging per 10,000 words in law review articles accounting for 45% of all hedges in this genre. In Supreme Court opinions,
there were 53.4 instances of modal verbal hedging accounting for 60% of all hedging. The table below compares modal frequency in the two sub-corpora:

![Figure 5.1: Modal verb frequency per 10,000 words](image_url)

Modal verbs seem to be involved in two hedging strategies: ‘indetermination’ which adds fuzziness or uncertainty to a proposition by making it less explicit and vaguer in terms of quality or quantity, and camouflage hedging which diverts attention away from the hedged aspects of a proposition. These two strategies help to carry out several functions, some of which depend on the genre and its communicative purposes.

Indetermination is commonly associated with the hedging function of allowing the addressee to show lack of commitment to the truth value of a proposition in order to either disguise the fact that he does not know all of the precise details (Fraser, 2010) or to achieve greater precision by expressing the true level of knowledge and understanding he has of the topic (Salager-Meyer, 1997).
addition, indetermination helps the writer to tone down a claim so that it is not overly assertive, thereby opening a discursive space in which other viewpoints are recognized. This helps writers gain the discourse community’s acceptance of their views as modesty and deference are conveyed. It also strengthens the writer’s claims as it can be used to weaken other competing claims and viewpoints. These functions are particularly useful in law review articles as their purpose is to add to a body of knowledge, contribute and encourage discussion of a particular topic area and raise the estimation of the writer in the field.

Similarly camouflage hedging, which is seen almost exclusively in law review articles, helps to strengthen a claim by deflecting attention from less definite, hedged elements. Nevertheless, the hedged elements also tone down the claim so that it is not overly assertive, which would be unacceptable to the discourse community.

Indetermination using ‘would’ helps to promote hypothetical thinking which is useful for law review articles, but key for Supreme Court opinions. Supreme Court opinions should not only settle the dispute at hand, but also they can have far-reaching consequences for future cases at all court levels. As the justices strive to provide a clear rationale for their decisions, consideration of a variety of scenarios, especially ones concerning different causes and effects of the act committed, help them to clarify their positions.
The five modal verbs chosen for this study will be discussed in detail in the following sections, and examples will be provided.
5.1 Would

There were 24.1 instances per 10,000 words of epistemic ‘would’ in law review articles and 28.9 instances in Supreme Court opinions, making ‘would’ the most widely used epistemic modal verb in the corpus. Previous studies (Williams, 2007; Facchinetti, 2001) have noted that epistemic use of ‘would’ appears less frequent than deontic use, but the current study seems to point to more frequent use of epistemic ‘would’ than either Facchinetti (2001) or Williams (2007) have found. This is supported by Coates (1983) who recognizes ‘would’ as the main hypothetical modal with epistemic meaning, deontic meanings occurring less frequently. Notably, Williams conceded that, “there are cases in normative [legal] texts where a non-deontic conditional of the second type is required in order to outline some hypothetical situation” (2007: 49). Indeed, there are 171 instances of ‘would’ used in a concordance with ‘if’ in law review articles, and 168 such instances in Supreme Court opinions. Still, use of ‘would’ in conditional sentences appears to account for only around 10% of the instances in the corpus.

Conditional sentences are composed of two clauses: a conditional (if) clause and a main clause. The ‘if clause’ expresses a direct condition which can be real or unreal (imagined). For the main clause to be true, the condition in the ‘if clause’ must be fulfilled. If an imagined condition is expressed, the writer

50 The search context was quite broad: ‘if’ could be found 10 words to the left or right of ‘would’ so long as the two were in the same sentence.
“believes that the condition has not been fulfilled (for past conditions) or is not fulfilled (for present conditions) or is unlikely to be fulfilled (for future conditions)” (Greenbaum, 1996: 340). Thus conditionals which hinge on imagined situations necessarily express some epistemic doubt as to the truth value of the proposition they contain.

Examples of this use in law review articles include the following, the majority of which are conditionals of the second type exhibiting the classic form in which the if-clause verb is in the past tense, and ‘would’ is found in the main clause. Type 2 conditional sentences are used to “speculate about something that is (or that we perceive to be) impossible or contrary to fact”, and “at the moment of speaking we see the action or event as being impossible” (Parrott, 2010: 274). Also known as counterfactuals, these conditional sentences “describe events or states of the world that have not occurred and implicitly or explicitly contradict factual world knowledge” (Kulakova et al., 2013: 1).

(1) The value of the sunk investment is the source of the patent rights’ hold-up value, which would not be present if there were perfect advance knowledge of the relevant patent rights and their scope and validity (Gergen, et al., 2012: 244).

(2) He thereby suggested that the DOJ would defend the DOMA if courts applied the lower standard, meaning that the Administration might defend a statute that it believes is motivated by animus to a class of citizens (Devins and Prakash, 2012: 512).

(3) It would be odd if he were to get rid of the burden by discovering it belonged to his neighbor (Horowitz, 2012: 382).
(4) Yet since they are parts of a larger enterprise, they would be more effective if their policies were consistent (Freeman and Rossi, 2012: 1146).

(5) The bridge would be a disaster waiting to happen if it were ready to collapse while appearing perfectly safe, but it would be a monumental waste if the bridge were quite safe without looking that way (Samaha, 2012: 1576).

In the majority of the cases in the corpora, the main clause containing ‘would’ precedes the –if clause. ‘Would’ in these utterances is instrumental in carrying out the strategy of indetermination, as it is used to express epistemic uncertainty of knowledge concerning the true outcome if the hypothetical situation mentioned in the ‘if clause’ were to be realized. For example, in (5) ‘would’ allows the writer of the article to show lack of commitment to the proposition of an outcome being ‘a disaster’ since it is based on the hypothetical situation of the bridge collapsing. In addition, it serves to strengthen the writer’s argument that opposite could be true, namely that the bridge could look in need of repair but be perfectly safe. He seems to imply that the bridge in question looks unreliable, but it would be wasteful to make it look better if there was no safety issue. His argument seems to hinge on the fact that the true state of the bridge is uncertain. He cannot declare categorically which outcome is likely, a disaster or a waste, due to insufficient data. Thus, ‘would’ is used as an accuracy-oriented hedge to reflect the true level of knowledge possessed by the writer allowing him to be over-precise.
Chapter 5: Analysis of Modal Verbs

Type 2 conditionals can also be found in the sub-corpus of Supreme Court opinions:

(6) We would face a different case if the Secretary’s regulation did not recognize an exception for good cause or defined good cause so narrowly as to exclude cases of fraudulent concealment and equitable estoppels. Sebelius v. Auburn Regional Medical Center (2013)

(7) If extended in this way the rationale would justify detaining anyone in the neighborhood who could alert occupants that the police are outside, all without individualized suspicion of criminal activity or connection to the residence to be searched. Bailey v. United States (2013)

(8) And the same would be true if the dog was trained to sniff, not for marijuana, but for more dangerous quarry, such as explosives or for a violent fugitive or kidnapped child. Florida v. Jardines (2013)

(9) And that would remain true if Hamas were an organization of United States citizens entitled to the protection of the Constitution. Agency for International Development v. Alliance for Open Society International (2013).

(10) That would be tolerable if the governing statute required double standards, but here, for the reasons already stated, it does not. University of Texas Southwestern Medical Center v. Nassar (2013)

(11) One would therefore expect Congress to speak clearly if it intended to trench on state control in this domain. Maracich v. Spears (2013)

In the following conditionals of the second type, the verb in the main clause is ‘could’. This use of ‘could’ is deontic, and corresponds to the modal verb ‘can’ being used in the past tense to express ability, not possibility.
(12) Nor did Justice Scalia say—in dicta or otherwise—that it would be immaterial if the claimants could show that the instant claim required class treatment (Gilles and Friedman, 2012: 670).

(13) This right would be of little practical value if the State’s agents could stand in a home’s porch or side garden and trawl for evidence with impunity. *Florida v. Jardines*

Finally, not all sentences follow the classic construction of a second conditional: If + would/ past tense main clause. Indeed, as in general discourse and use, while perhaps less frequent, there can be variants on conditional sentences. In the example below, from a law review article, ‘should the bill become law’ can be paraphrased ‘if the bill were to become law’.

(14) When the President ponders a bill he certainly does not adopt the implicit congressional view that should the bill become law it would be constitutional (Devins and Prakash, 2012: 528).

In (15), the mixed conditional is formed by If + past tense, followed by the conditional perfect in the main clause. The conditional perfect in the main clause would usually be preceded by the past perfect tense in the if-clause to form a conditional of the third type. However combining a second conditional if-clause with a third conditional main clause describes “past events [which] may be the result of timeless or present facts (Parrott, 210: 279).
(15) But the residual losses of agency costs exist precisely because they are characterized by the presence of unverifiable information; if that were not the case, firms would have created appropriate monitoring and bonding mechanisms (which may or may not include proxy access) already (Stratmann and Verret, 2012: 1448).

In (16) and (17) below, the mixed conditional exhibits a different form, with ‘would’ in the main clause followed by If + past perfect. This is done to highlight the present consequences of past events (Parrott, 2010: 279).

(16) In my view, Salinas’ claim would fail even if he had invoked the privilege because the prosecutor’s comments regarding his precustodial silence did not compel him to give self-incriminating testimony. Salinas v. Texas (2013)

(17) It would be a different case if the Executive had taken the further step of paying Windsor the refund to which she was entitled under the District Court’s ruling. United States v. Windsor (2013)

The above examples 1-17 showed ‘would’ used in a variety of conditional sentences. However, as Parrott points out, “In fact we frequently use would without ‘if’. This is often to: speculate, express hypothetical meaning, describe what we are imagining” (2010: 159). “In this case, a condition is usually implied” (Parrott, 2010: 279).

The example below shows two instances of the use of ‘would’ to outline a hypothetical situation, but only one ‘if clause’. In this example, the hypothetical
scenario involves imposing resource adjustments on a municipality with few resources to begin with.

(18) The court would have few incentives to impose excessive resource adjustments on such a municipality, as one can get only so much blood from a stone (Gillette, 2012: 326).

Coates (1983) suggests that epistemic ‘would’ expresses a hypothetical prediction, and can be paraphrased ‘I expect given unlikely conditions’. The above example could be paraphrased as:

(18a) Given the unlikely condition that the court is imposing excessive resource adjustments on a municipality of few resources, I expect it to have few incentives to do so.

More examples of single ‘would’ clauses from both sub-corpora follow.

(19) In practice, this means that, for example, a company that earns $100 million over 1,461 days would pay approximately the same amount of taxes as a company that has earned $25 million over 365 days. These two companies would have almost the same average profits. PPL Corporation and Subsidiaries v. Commissioner of Internal Revenue (2013)

(20) The question is whether such relief would be effectual in this case. Chafin v. Chafin (2013)

(21) More generally, soft-paternalism arguments help show why contractors as a class would at times want altering rules to deviate from simply minimizing transaction costs (Ayres, 2012: 2044).

(22) Judge Cardozo found that the parties’ attempts to displace the substantial performance rule were insufficient, but he did not indicate what words
would be sufficient (Ayres, 2012: 2056).

(23) Obviously, a more careful empirical analysis would be required to reveal the extent to which this is done on a regular basis (Nourse, 2012: 122).

(24) But the law would thereby leave a jurisdictional gap: anyone who submitted to induction (and, thus, committed no crime) would have no avenue for judicial review (Grove, 2012: 290).

Not only is ‘would’ used in declarative statements, but also it can be used in questions, serving as a rhetorical question. In (25), there is also an interesting use of the impersonal subject ‘one’ signaling the strategy of depersonalization, which distances the writer from the proposition being made, or in this case, the rhetorical question being posited.

(25) But, one might ask, as a practical matter would the parties be able to enter into such an anticompetitive agreement? Would not a high reverse payment signal to other potential challengers that the patentee lacks confidence in its patent, thereby provoking additional challenges, perhaps too many for the patentee to “buy off?” Federal Trade Commission v. Actavis (2013)

However, it is not unusual to find ‘would’ in conjunction with personal attribution such as the first person singular and plural pronouns in the examples below. In this case, the strategy of subjectivization is employed to highlight that this is a personal opinion. The opinion is mitigated as it is presented as a hypothetical situation. This can be effective because “would is frequently used to hedge assertions which someone might challenge” (Carter and McCarthy, 2006: 281).
Nevertheless, I would leave it to the Seventh Circuit to decide, under the proper standard for supervisory status, what impact, if any, Davis’ job description and the co-worker’s statement should have on the determination of Davis’ status. Vance v. Ball State University (2013)

Though it presents a closer question than the impossibility argument on which the majority relies, I would reject Mutual’s obstacle pre-emption defense as well. Mutual Pharmaceutical Company v. Bartlett (2013)

A requirement we would otherwise classify as nonjurisdictional, we held, does not become jurisdictional simply because it is placed in a section of a statute that also contains jurisdictional provisions Sebelius v. Auburn Regional Medical Center (2013)

Hypothetical ‘would’ is often used along with other hedges. In the examples below, taken from a Supreme Court opinion, ‘might’, ‘could’ and ‘may’ figure prominently, signaling that the situation being described is hypothetical. No explicit ‘if clause’ is necessary.

A single executive action might well produce multiple plaintiffs, who could plausibly bring suit in different states. Klaxon would produce different answers in each suit. Even a single plaintiff might well have a choice about where to file suit, and in such a case, the plaintiff can always choose a jurisdiction precisely because it will yield a choice-of-law rule different from the one the executive applied (Baude, 2012: 1410).

Moreover, because a counterfeit would presumably include Nike’s swoosh, an independently registered trademark not at issue here, invalidating the Air Force 1 trademark may not be sufficient to
allow Already to proceed to make counterfeits. Already v. Nike (2013)

(31) Yet further opportunities for judicial exposition likely would have served no purpose. The Federalist-dominated federal courts had already upheld the Sedition Act’s constitutionality and likely would have continued to do so (Devins and Prakash, 2012: 526).

In conclusion, hypothetical and counterfactual thinking facilitates legal argumentation by enabling writers to engage with a range of possible scenarios outside of their present, real situation and predict likely outcomes. The fact that both law review articles and Supreme Court opinions rely so heavily on ‘would’ indicates the degree of hypothetical thinking inherent in these legal genres. In particular, given the great frequency of ‘would’ in comparison with other modal verbs, this seems especially true for Supreme Court opinions whose communicative purpose it is to resolve the legal dispute at hand. Strassfeld “assumes that legal decisionmakers cannot avoid counterfactual questions” and points out,

In law, as in the rest of life, we indulge, indeed, require, many speculations on what might have been. Although such counterfactual thinking often remains disguised or implicit, we encounter it whenever we identify a cause, and quite often when we attempt to fashion a remedy. (1992: 342)

Counterfactual and hypothetical thinking, most pervasive in the reasoning move of Supreme Court opinions, function to strengthen the justices’ argument by weakening a claim to the contrary, presenting it as unlikely or impossible. While this can be seen in law review articles as well, these academic articles
also draw upon other rhetorical techniques to persuade the reader of their position such as appeal to authority in the form of citation of other scholars and experts.

In addition, counterfactual conditionals are strongly related with causation, the relationship between a cause and effect. Defining this relationship is important in settling a legal dispute. For example, if A shot B, but the emergency operator did not give priority to the situation sending the ambulance to the scene so late that B died while waiting, the cause of death could be either the gunshot wound, or negligence on part of the emergency operator. Counterfactual thinking about how a situation could have turned out differently changes perceptions of the causal role of events and agents which can be key to a justice explaining the rationale behind a holding.
5.2 May

‘May’ and ‘might’, according to Hyland are often “considered prototypical hedges” (1998c:116), and indeed ‘may’ is the second most frequent epistemic modal verb used in the two sub-corpora\textsuperscript{51} followed closely by ‘might’ in law review articles.\textsuperscript{52} Thus, at least in law review articles it appears that both ‘may’ and ‘might’ can be “used interchangeably to indicate a 50-50 assessment of possibilities” (Hyland, 1998c: 116). However, ‘might’ is much less common in Supreme Court opinions than ‘may’\textsuperscript{53}, which corroborates Hyland’s (1998c) findings for scientific writing in which a similar trend was found.

Epistemic ‘may’ and ‘might’ appear to signal the strategy of indetermination by adding ‘fuzziness’ or uncertainty to the quality of a statement. Their function is to shed epistemic doubt on a proposition and denote lack of commitment to the proposition’s truth value. The fact that epistemic ‘may’ and ‘might’ are used over 50% more often in law review articles than in Supreme Court opinions could be due to law review writers seeking some protection from loss of face which could arise from counter claims or negative responses to their propositions. Supreme Court justices may not feel the need for the same level of protection against loss of face given that theirs is the highest court in the land and their decisions are binding. Use of ‘may’ in law review articles could also correspond to a need to conform to the academic discourse community’s

\begin{footnotesize}
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\item \textsuperscript{51} It may be recalled that deontic uses of ‘may’, inherent in legal genres, have been removed.
\item \textsuperscript{52} ‘May’ occurs 16.8 times per 10,000 words in law review articles, while ‘might’ appears 15.6 times.
\item \textsuperscript{53} In Supreme Court opinions, there are 10 instances of ‘may’ per 10,000 words, but only 5 instances of ‘might’.
\end{itemize}
\end{footnotesize}
accepted writing style which seeks to ‘balance objective information, subjective evaluation, and interpersonal negotiation according to appropriate disciplinary norms” (Hyland 2005b: 180). An example of the use of ‘may’ in a law review article follows:

(32) Second, once one takes into account the premium associated with a controlling interest in a firm, the Roe proposal may systematically undercompensate junior interests and overcompensate senior interests (Adler and Ayres, 2001: 145).

This example could also be paraphrased using ‘perhaps’ or ‘I believe’:

(32a) I believe the Roe proposal systematically undercompensates junior interests…

In the above example, epistemic ‘may’ appears in the main clause of the sentence. This is quite common in law review articles in which a degree of epistemic doubt is expected, and categorical assertions are avoided in order to show respect for other viewpoints, and avoid losing face in the event of counter claims. However, it is rather uncommon in Supreme Court opinions which have the aim of settling a dispute and providing a definitive answer to a legal question. In Supreme Court opinions ‘may’ in the main clause generally carries a legalistic, deontic meaning “connected to discretionary power or prohibition” (Williams, 2007: 122). In general instances of epistemic ‘may’ are relegated to subordinate clauses.
Another common pattern found for both genres is negative ‘may + not. Often, ‘may not’ expresses prohibition in legal discourse (Williams, 2007: 121), illustrating a deontic use of ‘may’ as in the following example from a Supreme Court opinion:

(33) The Leadership Act provides that “any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking” may not receive funds appropriated under the Act. 22 U. S. C. §7631(f). Agency for International Development v. Alliance for Open Society International (2013)

However, ‘may not’ is not limited to deontic use. It can occur epistemically, denoting uncertainty or lack of commitment. It is perhaps not surprising to find this in a law review article (34), however, epistemic ‘may not’ can be seen in Supreme Court opinions as well (35). In the latter, however, there is a sense that in addition to lack of commitment and doubt, a value judgment is also being made about the argument in question, put forward by counsel:

(34) These rules may not only aid those judges who rely upon legislative history but also help textualists seeking the key text (Nourse, 2012: 104).

(35) This argument attributes to criminal defendants and their attorneys a degree of timidity that may not be realistic. Descamps v. United States (2013)

Nevertheless, ‘may’ is most often found in the positive, not in the negative as in these examples from both law review articles and Supreme Court opinions. While in (36), (37) and (38) ‘may’ is used to underscore the epistemic uncertainty of the proposition, in (39) use of ‘may’ seems to point to a
politeness strategy. It is almost as if the Amicus Centre wishes to apologize to
the Court for suggesting that it look to England and Wales for best practice.

(36) Even some challenges to the underlying law may, however, be best understood as directed at the federal executive (Bulman-Posen, 2012: 482).

(37) This is an empirical question that deserves investigation and may support application of these rules in the administrative sphere (Nourse, 2012: 78).

(38) The Court may feel compelled to reach that result because it thinks that it would be unworkable to draw a distinction between a preverdict termination based on the trial judge’s misconstruction of an element of an offense and a preverdict termination based on the judge’s perception that a statute contains an “element” that is actually nonexistent. Evans v. Michigan (2013)

(39) Amicus Centre for Family Law and Policy calls our attention to the management of Convention hearings and appeals in England and Wales and suggests that procedures there may be instructive. Chafin v. Chafin (2013)

Epistemic ‘may’ is frequently used along with intensifiers such as ‘even’, ‘simply’, ‘especially’, ‘particularly’, ‘in fact’ and ‘well’ most notably in law review articles. Such emphatic expressions when used alongside a hedge constitute camouflage hedging, which displaces the focus of the reader’s attention or negative reaction from the proposition. For example, in (40) the fact that a company would choose to relocate rather than become more efficient would not usually be well-received; however, the intensifier ‘simply’ makes it seem a viable option.
(40) It may, for example, simply relocate rather than eradicate bureaucratic redundancy and inefficiency (Freeman and Rossi, 2012: 1154).

(41) It may even be that administrators are more expert in Congress’s rules than are judges (Nourse, 2012: 78).

(42) This may be especially true in a legal context, where claims of obedience to precedent or original understanding carry special weight and may be particularly useful in justifying revolutionary interpretations of the law (Franklin, 2012: 1366).

(43) Our results do not, however, demonstrate that a market capitalization threshold as low as $75 million is required, and an optimal exemption may in fact be higher than that amount (Stratmann and Verret, 2012: 1464).

(44) There is no need to manipulate constitutional doctrine and hold these cases moot. Indeed, doing so may very well undermine the goals of the treaty and harm the children it is meant to protect. Chafin v. Chafin (2013)

(45) If he answers the question, he may well reveal, for example, prejudicial facts, disreputable associates, or suspicious circumstances—even if he is innocent. If he remains silent, the prosecutor may well use that silence to suggest a consciousness of guilt. Salinas v. Texas (2013)

Compound hedging, whereby ‘may’ is used in conjunction with other hedges such as ‘unlikely’ or ‘possible’ or even ‘might’, is not uncommon, particularly in law review articles. This emphasizes the epistemic uncertainty surrounding the claim and distances the writer from full commitment to it even more than a single hedge would. Compound hedges heighten the protection afforded the writer by a single hedge reducing potential face threatening acts even further.
(46) At best, requiring initials may inform a subset (and probably a small minority) of nondrafters and is thereby unlikely to substantially change the contractual equilibrium (Ayres, 2012: 2075).

(47) Less directly, it may be possible for legislators to craft untailored altering rules that impose disparate impacts with regard to the availability of opt-out (Ayres, 2012: 2093).

(48) A final question asks where our proposal might work. It may work for judicial takings, where the Court now most expects it. And it may work elsewhere too, though we are admittedly skeptical (Bloom and Serkin, 2012: 614).

Use of ‘may’ is not limited to the present. While less frequent, epistemic ‘may’ can be used to comment on events in the past. The following comments on a belief possibly held in the past by the drafters of a Compact, namely that Texas could reach a particular river without entering the neighboring state of Oklahoma. As the Compact was written over a century ago, it is impossible to know the true mindset of its drafters:

(49) If Texas was able to access water through the south bank of the River—an issue left unbriefed by the parties—the Compact’s framers may have believed that Texas could reach the River and take water from it without having to enter Oklahoman land, casting doubt on Tarrant’s theory. Tarrant Regional Water District v. Herrmann (2013)

In conclusion, while ‘may’ is often used deontically, especially in Supreme Court opinions, there are many examples of its epistemic use in both genres. In Supreme Court opinions, in addition to uncertainty, epistemic ‘may’ can also
signal a politeness strategy. In law review articles, in contrast, ‘may’ is generally used to express uncertainty as to the truth value of a proposition and signals lack of commitment to it. ‘May’ is used in conjunction with other hedges to underscore lack of commitment to a proposition as well as with intensifiers to achieve camouflage hedging. These uses afford the writer even more protection from challenges by the reading public. Though less frequent, ‘may’ can also be used to comment on past events.
5.3 Might

As may be recalled, ‘might’ was found almost as frequently in law review articles as ‘may’, but much less frequently in Supreme Court opinions than ‘may’ regardless of the fact that it is listed as a principal epistemic verb by Coates (1983). Perhaps that is due, as some postulate, to the fact that ‘might’ expresses remote possibility, indicating a higher degree of tentativeness as compared with ‘may’ (Palmer 1990: 58; Williams, 2007: 141), Supreme Court opinions, by their very nature as binding documents, may seldom find the need to express such extreme tentativeness. Indeed, their main communicative purpose is to serve as authentic public records of decisions which must be followed by lower courts in subsequent cases. Law review articles, on the other hand, aim to disseminate and stimulate research as well as provide a forum for discussion. ‘Might’, even more so than ‘may’ emphasizes the subjectivity of a claim by presenting it as a reasonable opinion rather than a certain fact, opening a ‘discursive space’ (Hyland 2005b: 179; Hyland 2009: 75) in which alternative viewpoints can be put forth.

‘Might’ is most frequently used in main clauses in both Supreme Court opinions and law review articles in order to implement two hedging strategies: indetermination and depersonalization. It is most frequently used in impersonal constructions which allow the writer to conceal his identity behind abstract subjects such as ‘a communication’ in (50), ‘default rules’ as in (51), ‘context of slavery’ in (52), ‘these conditions’ in (53) or the deictic ‘that’ in (54). This
servers to distance the writer from commitment to the truth value of the proposition.

(50) Because, in some cases, a communication sent with DPPA-protected information may serve more than one objective, a court must discern whether solicitation is its predominant purpose. That purpose might be evident from the communication itself. Maracich v. Spears (2013)

(51) Thus, default rules might establish when and where delivery is due; what is to be delivered; who is to perform a duty; and even how the duty is to be performed (Ayres, 2012: 2035).

(52) The very different context of slavery might provide another example of high-salience interstitial law (Baude, 2012: 1426)

(53) These conditions might not be satisfied in many cases (for example, disciplines might influence each other) (Biber, 2012: 532).

(54) At oral argument, PPL contended that an excess profits tax in which the excess profits threshold varies according to market capitalization would also have an effective tax rate that varies across taxpayers but remains creditable. Tr. of Oral Arg. 26–27. That might be true, but that does not describe the situation here. PPL Corporation and Subsidiaries v. Commissioner of Internal Revenue (2013)

‘Might can also be seen with subjects that refer to a person or people, but who remain unnamed such as ‘some’, ‘those of suspicious mind’ or ‘several agencies’ as in the examples below, which add fuzziness and vagueness to the proposition. This lack of precision allows the writer to make a claim which
others appear to support thus deflecting challenges brought on by the reader as to the truth value of the claim.

(55) Some might argue that since small-cap stocks are traded less regularly than large-cap stocks and have less extensive analyst followings, the focus on stock returns to small firms is flawed (Stratmann and Verret, 2012: 1456).

(56) Those of suspicious mind might contend that, regardless of the Supreme Court’s protestations, eBay is a cog in a grander project of curtailing injunctive relief in general and possibly injunctive relief in institutional-reform and environmental litigation in particular (Gergen, et al., 2012: 206).

(57) Several agencies might agree to authorize a single agency to promulgate a rule, which they then subsequently enforce in the context of their own programs (Freeman and Rossi, 2012: 1166).

In addition, ‘might’ is also commonly seen with the impersonal pronoun ‘one’:

(58) But one might argue, with equal plausibility, that the changes reflect a decision to make certain that courts would read in similar ways “defalcation,” “fraud,” “embezzlement,” and “larceny.” Bullock v. Bank Champaign (2013)

‘Might’ is sometimes used with specific entities such as ‘Congress’ as in the following. However, it is very rarely used with personal reference such as the personal pronouns ‘I’ or ‘we’.

(59) Needless to say, this circular reasoning does not explain why Congress might have wanted the designated beneficiary to keep the proceeds even when that is indisputably contrary to the insured’s expressed wishes at the time of death. Hillman v. Maretta (2013)
Congress might go one step further by making adherence to the interested agency’s suggestions the default position from which the action agency may deviate only by showing that adherence to such suggestions would interfere with the action agency’s legal duties (Freeman and Rossi, 2012: 1160).

Finally, while most frequently appearing in main clauses, ‘might’ can also be found in subordinate clauses, often occurring with ‘that’ in a relative clause describing the noun that precedes it as opposed to the entire proposition. In (61), for example, ‘everything’ is qualified by ‘that might in some indirect way portend the possibility of future economic gain’. This is an ‘accuracy-based hedge’ used to “achieve precision… by indicating that a proposition is based on plausible reasoning or logical deduction in the absence of full knowledge” (Hyland, 1998c: 163).

Despite the breadth of some of these formulations, however, the term “property” plainly does not reach everything that a person may hold dear; nor does it extend to everything that might in some indirect way portend the possibility of future economic gain. Sekhar v. United States (2013)

In conclusion, ‘might’ is found much more frequently in law review articles than in Supreme Court opinions. It is commonly found in main clauses along with abstract subjects to distance the writer from the responsibility of making the claim. It is also found with unnamed subjects to lend credibility to a claim, while making it vague at the same time. Thus it is important in the strategies of depersonalization and indetermination which help to minimize ‘threat-to-face’
by warding off potentially embarrassing opposition from others in the field with different viewpoints.

Supreme Court justices have little need to express such extreme tentativeness or to distance themselves in such a way from their claims. Indeed, they are wont to take full responsibility for their claims in accordance with their role as final adjudicators. They do not need to appeal to unnamed subjects for support as the main support from their decisions comes from the material facts of a case.

5.4 Could

‘Could’ was the third most frequent modal verb found in the corpus of Supreme Court opinions, while it ranked fourth in frequency in the corpus of law review articles. ‘Could’ is similar in meaning to epistemic ‘may’ or ‘might’ and is used to express “tentative possibility” (Hyland, 1998c: 109). Williams asserts that “it is occasionally possible to find cases of non-deontic could in [legal] prescriptive texts referring to some theoretical possibility” (2007: 141). This can be clearly seen in the following examples, the first one from a law review article, and the second one from a Supreme Court opinion:

(62) A single executive action might well produce multiple plaintiffs, who could plausibly bring suit in different states (Baude, 2012: 1412).

(63) Trial judges and trial lawyers, however, can find objective benchmarks to make projections of the damages the plaintiff likely could have proved had the case gone to trial. Wos v. E. M. A. (2013)
Example (62) above describes a present situation, while (63), used in the perfect aspect, describes a past event. In both examples, the use of ‘could’ with other hedges such as ‘plausible’ or ‘likely’ highlights the epistemic nature of its use.

However, discerning between deontic and epistemic use of ‘could’ is not always clear-cut. Several authors make a distinction between the use of ‘could’ deontically as the past tense of ‘can’ to report on what the law allows, and its epistemic use to reflect the opinion of the addresser—who is not the source of authority—concerning how likely something is to happen (Coates, 1983, Palmer 1990, Williams, 2007).

That said, this distinction is often so ambiguous as to allow for both interpretations to be applied to the same utterance. The following examples illustrate this point:

(64) The majority’s approach could be taken as recognizing an exception to R. A. V. when circumstances show that the statute’s ostensibly valid reason for punishing particularly serious proscribable expression probably is not a ruse for message suppression, even though the statute may have a greater (but not exclusive) impact on adherents of one ideology than on others. Virginia v. Black (2003)

Hyland explains that in such cases, “The semantic contrast is therefore realis vs irrealis...If the statement represents that an outcome depends on external

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54 Palmer (1990) and Williams (2007) refer to the latter as a ‘dynamic’ use of ‘could’.
enabling or disabling circumstances, it carries a root meaning, if not then it is epistemic” (1998c:111). In the example above, however, there are two interpretations: either “certain external circumstances, in this case the application of the statute in order to punish an instance of self-expression involving a message which can be prohibited by law, such as those used in certain hate crimes, for example, enable the Court's recognition of an exception to R.A.V”, or “I believe that this approach might be seen as an exception to R.A.V.” In any case, Hyland (1998c) highlights that perhaps this ambiguity is not unintentional. It can often be used to achieve certain private intentions. “Indeed, this kind of ambiguity may provide additional security for writers enabling them to establish greater distance from their propositions (Hyland, 1998c: 111). The following, taken from a law review article illustrates similar ambiguity:

(65) In such special cases, regardless of the welfare analysis we conducted above, there could be grounds under contract law for the consumer to rescind the contract due to nondisclosure of the hidden benefits (Gilo and Porat, 2006: 17).

This example is open to two interpretations: either “contract law recognizes such grounds” or “I believe there might be grounds”. Nevertheless, often it is clear whether the meaning is epistemic or not. In this example, from a law review article, the first use of ‘could’ seems to be epistemic and can be paraphrased “I believe that this is imaginable” and the second use of ‘could’
appears to be deontic, “the law allows for necessary or sufficient conditions to be formulated as rules or standards”.

(66) One could imagine that either necessary or sufficient conditions could be formulated as rules or standards (Ayres, 2012: 2037).

In both Supreme Court opinions and law review articles there are two patterns which occur significantly more frequently than any other: ‘Could + not’ and ‘could + be’.

(67) There could be other explanations for courts’ reluctance to aggregate. Those explanations could also be grounds for objections to aggregation. (Porat and Posner, 2012)

(68) A casual reader of the Court’s opinion could be forgiven for thinking this an easy case, one in which the text of the applicable statute clearly points the way to the only sensible result. Adoptive Couple v. Baby Girl (2013)

Following are two examples of ‘could + not’, the first taken from a Supreme Court opinion, and the second from a law review article:

(69) The Iowa Supreme Court could not deny, however, that the Iowa law, like most laws, might predominantly serve one general objective, say, helping the racetracks, while containing subsidiary provisions that seek to achieve other desirable (perhaps even contrary) ends as well, thereby producing a law that balances objectives but still serves the general objective when seen as a whole. Fitzgerald v. Racing Association of Central Iowa (2003)
Put bluntly, House members could not possibly have debated section 703(j) because it had not yet entered the bill (Nourse, 2012: 107).

Again, examples (69) and (70) above can serve to highlight the difficulty in clearly interpreting the use of ‘could’ as deontic or epistemic. For example, in (69), one interpretation could be “The Iowa Supreme Court is unable to deny that their laws can serve several, sometimes contrary, objectives. There are external circumstances – in this case evidence obtained by examining their laws – which would not allow this.

Equally, ‘could’ may be interpreted as a past tense form of ‘root possibility can’ (Coates, 1983). In other words ‘could + not’ seems to express impossibility as opposed to inability. The Iowa Supreme Court had the ability to deny the fact in much the same way as anyone can verbally deny anything. However, it was impossible for them to do so in the face of what is known about how laws are formulated. Thus the utterance can be interpreted “It is impossible for the Iowa Supreme Court to deny their laws can serve several, sometimes contrary, objectives”. Finally, a third interpretation might be “I believe that the Iowa Supreme Court, or any state supreme court, would find it difficult to claim that their laws serve one objective”.

In conclusion, it appears that ‘could’ is used in the two genres deontically more than epistemically, but deciding the true nature of the modal verb in context is
seldom straightforward. It can often be interpreted as both deontic and epistemic in the same sentence. Writers play with the ambiguity afforded by ‘could’ to distance themselves even further from their claim. The fact that meaning is fuzzy places the responsibility for its interpretation with the reader, allowing the writer to accept or reject an interpretation at his convenience.
5.5 Should

The final modal verb to be addressed in this chapter is ‘should’. Once the results had been refined, and deontic uses omitted, should’ was the least frequent epistemic modal in the corpus with fewer than 1 instance per 10,000 words. There seems to be some disagreement about the meaning of ‘should’ in the literature. Williams (2007) considers ‘should’ to be deontic, citing Huddleston and Pullum who explain that should “is usually subjective, indicating what the speaker considers ‘right’” (2002: 186). Coates (1995: 59) would argue that this element of subjectivity is what allows ‘should’ to be considered epistemic when not expressing its primary meaning of weak obligation. Declerck asserts that while ‘should’ expresses weak obligation, it also expresses some doubt as to whether the situation referred to will actualize (1991: 378). Finally, Hyland explains “epistemic should typically refers to the future and consequently has a more tentative meaning than would, expressing a less confident assessment of probability based on facts known to the writer” (1998c: 113-114). Thus, with such lack of consensus it is not difficult to imagine that it is rarely clear, in any given instance, if ‘should’ is expressing deontic or epistemic modality.55

That said, it is often used in examples such as the following from a Supreme Court opinion.

55 For a more complete discussion of properties necessary to distinguish between epistemic and deontic possibility, see Coates (1995: 56).
Chapter 5: Analysis of Modal Verbs

(71) Noncitizens *should* be given an opportunity during immigration proceedings to demonstrate that their predicate marijuana distribution convictions involved only a small amount of marijuana and no remuneration, just as a federal criminal defendant could do at sentencing. Moncrieffe v. Holder (2013)

In this case ‘should’ seems to express weak obligation especially since paraphrasing the utterance using ‘I assume/probably’ as suggested by Coates (1983) does not seem to capture the true meaning: I assume noncitizens are given an opportunity…. Nevertheless, the use of ‘should’ here does seem to indicate that the writer is unsure about the noncitizens receiving such a possibility in every instance. Perhaps this example could be paraphrased:

(71a) There is somewhat of an obligation to give noncitizens the same opportunity as a federal criminal defendant has, but I am not sure this happens in every case.

The above discussion, however, cannot mask the fact that the use of ‘should’ in both Supreme Court opinions and law review articles appears to be overwhelmingly deontic, expressing weak obligation rather than epistemic, expressing tentative assumption. To clarify this distinction, the example from the Supreme Court opinion above can be contrasted with the following: ‘He should be there by now’. This can be paraphrased: ‘I assume he is there by now’ or ‘He is probably there by now’. ‘He should be there by now’ makes a tentative assumption that he has arrived at his destination. It does not express that he had an obligation to do so. Nevertheless, there are some clear
examples of epistemic ‘should’ in the corpora, the following being taken from a law review article:

(72) California and Texas, for instance, are so diverse overall that it should come as little surprise that they also contain many diverse districts (Stephanopoulos, 2012: 1946)

In this case, the final utterance can be paraphrased ‘This is probably no surprise’ or ‘I assume this is no surprise, based on the inference that the reader has experience with or background knowledge about the two states. Thus, in the case of ‘should’ a broad generalization could be that while there are instances of epistemic meaning in the corpora, ‘should’ is primarily deontic.
5.6 Conclusion

Modal verbs frequently serve as vehicles through which writers express hedging in both sub-corpora under study. However, while modal hedging is often employed to realize similar strategies in the two genres, the function of the hedges differ in accordance with each genre’s communicative purposes.

Would’ is the most significant modal verb found in both sub-corpora, and is used to carry out the strategy of indetermination and engage in hypothetical and counterfactual thinking. Notably, ‘would’ is used more frequently in Supreme Court opinions than in law review articles where it serves to strengthen the justices’ argument by weakening a claim to the contrary, presenting it as unlikely or impossible. In addition counterfactual conditionals are strongly related with causation, the relationship between a cause and effect, and defining this relationship is important in settling a legal dispute. As one of the main communicative purposes of a Supreme Court opinion is to settle the dispute at hand, entertaining a variety of hypothetical situations aids the justice in providing a rationale for the holding. As another communicative purpose is to clarify a point of law for future cases, hypotheticals aid future trial lawyers who may find themselves involved in a case with similar circumstances.

‘May’ often has a deontic value, especially in Supreme Court opinions, but there are many examples of its epistemic use in both genres. In Supreme
Court opinions, in addition to signal uncertainty, ‘may’ can be used to convey a value judgement. In the next chapter on lexical verbs it will be seen that conveying stance by making value judgements is a frequent theme in Supreme Court opinions.

In law review articles ‘may’ generally signals uncertainty as to the truth value of a proposition and lack of commitment to it. ‘May’ is used in conjunction with other hedges to underscore lack of commitment to a proposition as well as with intensifiers to achieve camouflage hedging. These uses aid the writer in presenting a claim as opinion rather than fact which has the dual effect of toning down the writer’s claim so that it is not overly assertive, which is generally frowned upon by the discourse community, and opening a discursive space in which other viewpoints are recognized. This is more important in law review articles which, in addition to informing the reading public on issues of import also have the purpose of providing a forum for discussion between members of the discourse community. Article writers also stand a better chance of gaining acceptance of their views within a body of work if deference and modesty are conveyed, and if their views are accepted, their status within the field will be elevated.

Used with abstract and unnamed subjects, such as in the case of ‘might’, modal verbs can also help to carry out the strategy of depersonalization, allowing the writer to distance himself from a proposition. ‘Might’ appears more
than three times more frequently in law review articles than in Supreme Court
opinions. This could be due to the fact that the fact that ‘might’ expresses
remote possibility, and Supreme Court opinions may seldom find the need to
express such extreme tentativeness given the power of the Court as the
ultimate review court and decisions taken there are binding.

Both ‘could’ and ‘should’ tend to have a deontic value in the two genres.
However, deciding the true nature of ‘could’ in context is seldom
straightforward. In the same proposition ‘could’ can often be interpreted as
both deontic and epistemic. This ambiguity is often purposeful as it moves the
responsibility for interpretation of the proposition from the writer to the reader.

The following chapter delves into the second element of lexical hedging, lexical
verbs. It will be seen that differences in the two genres can be attributed to
their different communicative purposes.
CHAPTER 6:
ANALYSIS OF LEXICAL VERBS
This is the second of two chapters analyzing verbal lexical hedges in the corpus of law review articles and Supreme Court opinions based on the final quantitative analysis of hedging (A4). Whereas chapter 5 focused on modal verbs, this chapter focusses on lexical verbs, which form the largest group of potential hedges found in both sub-corpora. There were 14 lexical verbs among the most frequent items signaling hedging in the corpus, each of which will be discussed in detail in this chapter.

Both law review articles and Supreme Court opinions made use of a wide variety of epistemic lexical verbs to signal hedging including ‘argue’, ‘consider’, ‘suggest’, ‘think’ and ‘believe’ among others. According to Hyland, verbs such as these

“represent the most transparent means of coding the subjectivity of the epistemic sources and are generally used to hedge either commitment or assertiveness. Their numerical significance thus reflects their rhetorical versatility in contexts where categorical assertions rarely represent the most effective means of expression. (1998c: 119-120).

Lexical verbs can be divided into four categories: speculative, deductive, quotative and sensorial (Hyland, 1998c) (See 2.3.1). The speculative and deductive categories together comprise judgmental hedges which express “epistemic judgments of the writer”; the quotative and sensorial categories comprise evidential hedges which involve “the nature of the evidence the writer employs to support a claim” (1998c: 120). Nevertheless, far from merely distinguishing judgement from evidence, a writer’s choice of lexical verb is
strategic, selected to adjust the strength of a claim as well as commitment to it in accordance with perceived limitations, lack of complete information, possible exceptions and alternative explanations.

This chapter aims to analyze and explain choice of verbal lexical hedging devices in the corpus, and links these choices to communicative purposes and constraints inherent in the two different genres which make up the corpus. Section 6.1 briefly reviews the four categories of lexical verbs analyzed in this study illustrated with examples from the corpus. 6.2 addresses speculative verbs, 6.3 deductive verbs, 6.4 quotative verbs and 6.5 sensorial verbs. Section 6.6 offers a summary and conclusion of the chapter.
6.1 Categories of lexical verbs

As will be recalled from 2.2.1, Hyland (1998c) indicated that there are four categories of lexical verbs: speculative, deductive, quotative and sensorial. Speculative lexical verbs indicate that there is some speculation or conjecture about the truth value of a proposition. Examples (1) and (2) below employ 'suggest' to convey that this is a subjective opinion, not a categorical fact.

(1) To avoid this risk, we suggest that defendants should be able to raise an aggregation defense—namely, to ask the court to aggregate claims brought against them in separate proceedings. (Porat and Posner, 2012)

(2) This Article suggests a workable distinction between the elusive concepts of appearance and reality, along with several ways in which the two can be related (Samaha, 2012: 1638).

In (2), a lack of agency reflects a desire to hedge personal responsibility, thereby shielding the writer from potential negative reaction.

In addition to performative verbs such as 'suggest', hedges can include cognitive verbs such as 'believe', 'think', 'depend', and 'expect'. These verbs involve unobservable cognitive states or attitudes and are more uncertain than the more 'performative' type. Sentences (3), (4) and (5) below are examples.

(3) I expect that a good deal of this debate may emanate from contract scholarship (Nourse, 2012: 86).

(4) We believe that there are two reasons that courts and litigants have shied away from recognizing a causation-free autonomy right (Berger and Twerski, 2005: 274).
Chapter 6: Analysis of Lexical Verbs

(5) Accountability for this ordinance may depend on imprecise political processes, and the extent of the actual costs may depend on peculiar political dynamics (Bloom and Serkin, 2012: 618).

In example (5), a lack of agency coupled with the choice of verb reflects a desire to hedge personal responsibility, thereby shielding the writer from potential negative reaction. A more direct utterance could be: I believe accountability for this ordinance may depend on imprecise political processes.

In addition to speculative verbs, judgmental hedges are composed of deductive lexical verbs such as ‘assume’ which indicate inferential reasoning rather than speculation:

(6) For purposes of answering this question, we assume that Congress has complied with the Constitution’s Ex Post Facto and Due Process Clauses. United States v. Kebodeaux (2013)

Evidential hedges comment on ‘the nature of the evidence the writer employs to support a claim” (Hyland, 1998c: 120). That evidence can be second-hand, in which quotative verbs such as 'suggest', 'indicate' or 'argue' are used:

(7) Kahan and Rock argue that proxy access is largely not important (Stratmann and Verret, 2012: 1438).

(8) Hillman suggests that Wissner and Ridgway can be set aside because FEGLIA contains an express preemption provision and that conflict pre-emption principles ordinarily do not apply when that is so. Hillman v. Maretta (2013)
Evidence can also be based on the writer's senses, in which case sensorial verbs such as 'appear' or 'seem' are used:

(9) Nevertheless, there appears to be no generally applicable statutory or executive branch policy regarding the use of MOUs, leaving their content largely to the discretion of the agencies (Freeman and Rossi, 2012: 1160).

(10) It seems doubtful that agents have the ability to demand extra wages to offset their expected costs of committing criminal acts, especially wages to offset steps an employer might take to increase the probability of sanction (Buell, 2007: 1628).

Concluded the brief review of lexical verb categories, the following sections aim to explain the similarities and differences in how the verbs are used in the two sub-corpora. In particular, attention is paid to constructions the lexical verbs appear in. As Hyland points out, used in impersonal and passive constructions, lexical verbs can “indicate the writer’s lack of confidence and allow readers to evaluate statements more accurately”; when accompanied by personal reference, however, such as the first person pronouns ‘I’ and ‘we’, lexical verbs “generally help to soften claims” (1996a: 265). Attention is also paid to the environment of the lexical verbs, for example if they are accompanied by other hedges such as modal verbs or epistemic adjectives and adverbs. Finally, the lexical verbs’ role in hedging strategies such as subjectivization, depersonalization and indetermination is also addressed.
6.2 Speculative verbs

‘Speculative’ verbs enable writers to express ‘speculation’ or “guesses or ideas about what might happen or be true rather than facts” (Merriam-Webster, 2014). The most frequent lexical verbs appearing in both sub-corpora pertained to the speculative category which can include both performative verbs such as ‘suggest’ as well as cognitive verbs such as ‘believe’. A preponderance of speculative lexical verbs is in line with what Hyland found when studying scientific writing as well, which he suggested indicated “the adoption of pragmatically cautious positions rather than [highlighting] the evidence used to support them”. (1996a: 268)

There were 14.8 instances of a speculative verb per 10,000 words in law review articles in comparison to only 6.8 in Supreme Court opinions. Given that there were over twice as many instances of speculative verbs in law review articles than in Supreme Court opinions, this would seem to indicate that law review article writers are significantly more concerned with caution, and considerably more prone to marking their claims as ‘guesses’ rather than facts. This is logical in law review articles, as in any academic genre, which must adhere to certain constraints and meet certain expectations regarding the epistemic nature of knowledge. In academic genres, knowledge should not be addressed as absolute lest such categorical statements be proven incorrect.

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56Hyland clarifies that performative verbs “perform, rather than describe, the acts they label” (1998c: 120), and cognitive verbs “involve unobservable cognitive states or processed” (1998c: 121).
and lead to loss of face. In addition, as representatives of an academic genre, law review articles should serve to open dialogue within the discourse community around a particular issue, and overly certain, unhedged propositions do not show tolerance for, or invite differing viewpoints.

Law review article writers use lexical verbs to adjust the strength of their claims most likely to avoid negative reaction from the reading public which might disagree with their argument or possess additional knowledge which could cast doubt on their argument. For example, in (1) below ‘tend’ nuances and minimizes the claim concerning what people prefer. Others may disagree with this, believing people to hold other preferences, but since the claim is not categorical, it is easier for the wider reading public to accept, or at least leave unchallenged.

In addition, use of the subject ‘people’ adds vagueness to the claim. In (1), ‘tend’ is also employed to carry out the strategy of ‘indetermination’, which adds fuzziness or uncertainty to a proposition by making it less explicit and vaguer in terms of quality or quantity (Namsaraev, 1997). In the example below the extent to which ‘people’ prefer a 100 percent chance of gaining $500 over a 50 percent chance of gaining $1,200 is not clear.

(11) People tend to prefer a 100 percent chance of gaining $500 over a 50 percent chance of gaining $1,200, even though this means choosing an expected $500 gain over an expected $600 gain (Horowitz, 2012: 360).
In law review articles, lexical verbs can serve as shields to protect the writer. For example, in (2) below, ‘a workable distinction between appearance and reality’ is merely ‘suggested’, which is much less categorical than saying that a distinction is ‘provided’ or ‘given’ or ‘laid down’. In (2) ‘this article’ is a non-human, abstract rhetor used in an impersonal active construction. The fact that ‘this article’, makes the suggestion conceals the fact that it is the writer of the article who is in fact proposing the idea. This is an example of the strategy of depersonalization which allows the writer to avoid direct reference in order to shift the responsibility for a claim to some other entity (Namsaraev, 1997).

(12) This Article suggests a workable distinction between the elusive concepts of appearance and reality, along with several ways in which the two can be related (Samaha, 2012: 1638).

While having notably fewer hedges than law review articles, Supreme Court opinions nevertheless included more speculative hedges than any other category as well. The fact that there are fewer hedges in general most likely reflects the nature of Supreme Court opinions as legal documents binding on lower courts in their future decisions. Unlike writers of law review articles and other academic genres, Supreme Court justices are perhaps less concerned with negative reaction from those who disagree with their reasoning. As members of the highest court in the United States, they do not feel constrained by potential disagreement, especially since dissenters are given a voice and are able to express their views through written dissents. That would explain
why such hedges as ‘tend’, which soften and add fuzziness to a claim, are infrequent in Supreme Court opinions.

In addition, the justices are not concerned with opening a dialogue or discussion over the issue at hand as the adversarial legal world “comprises two opposing parties, where each fights for their own case, presenting a version of the facts that will be challenged by the other party” (Hale, 2004: 31). This could explain why justices feel less need to conceal their identity and minimize their personal responsibility. Indeed, justices are more likely to use personal reference such as the pronouns ‘I’ or ‘my’ than writers of law review articles thereby clearly assuming personal responsibility for their claims more readily. Therefore, instead of the strategy of depersonalization, the justices often prefer subjectivization to signal that what is being said is personal and subjective (Namsaraev, 1997).

(13) For these reasons, I believe that the Fifth Amendment prohibits a prosecutor from commenting on Salinas’s silence. I respectfully dissent from the Court’s contrary conclusion. Salinas v. Texas (2013)

However, clearly some speculation takes place in Supreme Court opinions, probably due to their dual purpose of resolving the present dispute at hand while also providing instruction and guidance for future courts facing similar cases. Supreme Court justices’ use of hedging indicates that they are conscious of the limitations of and exceptions to their argument. Despite the
necessity to inform posterior judgments, the facts in similar legal cases are seldom identical, meaning there is always room to argue that a particular judgment may not apply in all instances. In (14), for example, the justice employs the strategy of depersonalization to distance himself from the claim that ‘the litigation exception’ has limited applicability.

(14) The examples suggest that the litigation exception has a limited scope to permit the use of highly restricted personal information when it serves an integral purpose in a particular legal proceeding. Marachich v Spears (2013)

In addition, justices are also more likely to explicitly express a stance or value judgment than article writers probably due to the heightened position they find themselves in. Toska (2012), as may be remembered from 2.7, found that UK Supreme Court justices used hedging to express epistemic attitude on a given issue. U.S. justices appear to do the same, as in the following. It is interesting to note how the strong stance which is expressed through the use of ‘wrong’ is attenuated by ‘suggest’ showing a lack of certainty and assertiveness concerning the interpretation of what was said. The quality of the interpretation is made vague through the use of ‘suggest’ to carry out the strategy of indetermination.

(15) But it is wrong to suggest that this was uncontroversial at the time, or that this Court blessed universal fingerprinting for “generations” before it was possible to use it effectively for identification. Maryland v. King (2013)
In summary, speculative lexical verbs are used quite differently in the two genres, owing to the genres' different communicative purposes as well as the constraints and expectations put upon the writers by the discourse community.

Frequent speculative verbs in the two sub-corpora include: Believe, consider, depend, expect, indicate, predict, suggest, tend and think. Certain verbs such as ‘suggest’, ‘argue’, ‘propose’ and ‘think’ can be both speculative and quotative. ‘Suggest’ and ‘indicate’ will be addressed in this section (6.1) on speculative verbs since they are principally used as such in both sub-corpora. ‘Think’ is used differently in the two sub-corpora, but will also be included in 6.1. On the other hand, ‘argue’ is mainly used as a quotative verb and will be addressed in section 6.3.

The remainder of this section, therefore, will address the most frequently found speculative verbs in the two sub-corpora. It will start with the lexical verbs that were most statistically significant in both sub-corpora, namely ‘suggest’ and ‘believe’. This section will then continue by addressing speculative lexical verbs which followed ‘believe’ and ‘suggest’ in terms of statistical significance, namely ‘depend’ and ‘tend’. This section will then conclude with other speculative verbs such as ‘predict’, ‘indicate’, ‘consider’ and ‘expect’ which were less statistically significant.
6.2.1 Suggest

'Suggest' was the most frequently used lexical verb in law review articles with 5.8 instances per 10,000 words, as well as in Supreme Court opinions with 3.6 instances per 10,000 words.\(^{57}\) ‘Suggest’ is a performative verb which can pertain to both the speculative and the quotative category. Contextual analysis of the instances ‘suggest’ was used in, however, revealed that it was used mainly as a speculative verb in the corpus.

While with ‘believe’ law review article writers avoid use of personal reference, especially first person ‘I’, in favor of existential or impersonal subjects, the same is not true of ‘suggest’. That is because ‘I believe’ indicates a personal opinion which can be refuted or challenged by fellow members of the discourse community, opening the writer to potentially face-threatening acts. In the context of academia, writers strive for acceptance of their opinions, which is precisely why they often tone them down so that they do not appear categorical.

‘I/we suggest’, on the other hand, does not expose the writer to such loss of face or rejection. Rather, given that ‘suggest’ has the meaning ‘to mention (something) as a possible thing to be done, used, thought about’ (Merriam-

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\(^{57}\) This was arrived at by eliminating instances of 'suggesting' in citations, as well as instances of 'suggested' used narratively.
Webster 2014), ‘I / we suggest’ indicates that the writer is proposing a possible course of action or interpretation of events for consideration as opposed to opining. Academic discourse is collaborative in nature, and ‘I/we suggest’ seems dialogically expansive, indicating that the writer is willing to entertain dialogically alternative positions. ‘I/we suggest’ allows the writer to assume a certain humility and deference towards the discourse community.

Thus, in law review articles ‘suggest’ is often employed with the subjects ‘I’ or ‘we’ to signal subjectivization and indicate direct responsibility for the proposition being made.

(16) As I suggested earlier, state bailouts are likely to be politically costly to local officials, especially if intervention entails withholding state funds to reimburse advances or formal takeovers by state officials (Gillette, 2012: 320).

This can be paraphrased:

(16a) As I mentioned earlier as something to think about, state bailouts are likely to be politically costly to local officials…. 

‘Suggest’ can also be defined as “to propose as desirable or fitting” as in the following (Merriam-Webster, 2014):

(17) To avoid this risk, we suggest that defendants should be able to raise an aggregation defense—namely, to ask the court to aggregate claims brought against them in separate proceedings. (Porat and Posner, 2012)
Which can be paraphrased:

(17a) To avoid this risk, we propose that defendants should be able to raise an aggregation defense—namely, to ask the court to aggregate claims brought against them in separate proceedings.

The epistemic value of ‘suggest’ used as in (16) and (17) derives from the fact that what is being proposed is a ‘possibility’, not a certainty, and it is uncertain as to whether the proposal will be accepted.

By contrast, in Supreme Court opinions ‘suggest’ used with a first person pronoun can be found almost exclusively in the negative. Unlike those in the world of academia, Supreme Court justices do not feel the need to have their views accepted. As members of the highest court in the land, their word is binding; their opinions are not in danger of rejection. Their decisions can be discussed in academic circles, and there may be those who agree or disagree with their views and reasoning, but ultimately their decisions cannot easily be challenged on a legal basis. Therefore justices’ use of ‘I/we suggest’ does not stem from a desire to propose something for consideration, or to show humility and deference, or to invite other opposing viewpoints, but rather to strengthen their position with respect to an opposing view originating from their legal adversary.
As was explained in 2.2, recognizing other viewpoints often has the effect of strengthening one’s claims. To achieve this, a definite, direct statement is often used in conjunction with weakening devices (Hinkle et al., 2012). To understand this point, an example of an instance using a common pattern, ‘I do not mean to suggest’, is shown below in its wider context. This example is from a dissenting opinion written by Justice Scalia on the controversial topic of states’ rights to allow or prohibit same sex marriages. Chief Justice Roberts had also written a dissenting opinion stating at the end

I write only to highlight the limits of the majority’s holding and reasoning today, lest its opinion be taken to resolve not only a question that I believe is not properly before us—DOMA’s constitutionality—but also a question that all agree, and the Court explicitly acknowledges, is not at issue. United States v. Windsor (2013)

It would appear, however, that Justice Scalia did not feel the Chief Justice’s dissent was strong enough in its criticism of the majority opinion. Thus he writes,

(18) I do not mean to suggest disagreement with THE CHIEF JUSTICE’s view, ante, p. 2–4 (dissenting opinion), that lower federal courts and state courts can distinguish today’s case when the issue before them is state denial of marital status to same-sex couples—or even that this Court could theoretically do so. Lord, an opinion with such scatter-shot rationales as this one (federalism noises among them) can be distinguished in many ways. And deserves to be. State and lower federal courts should take the Court at its word and distinguish away.
In my opinion, however, the view that this Court will take of state prohibition of same-sex marriage is indicated beyond mistaking by today’s opinion. As I have said, the real rationale of today’s opinion, whatever disappearing trail of its legalistic argle-bargle one chooses to follow, is that DOMA is motivated by “‘bare ... desire to harm’” couples in same-sex marriages. Supra, at 18. How easy it is, indeed how inevitable, to reach the same conclusion with regard to state laws denying same-sex couples marital status. United States v. Windsor (2013)

Justice Scalia contends that he does not disagree with the Chief Justice, but he does not say that he agrees either. ‘I do not mean to suggest disagreement’ serves to hedge and mitigate actual disagreement. This is not an attempt at deference or politeness. It is clear that politeness is not foremost in Justice Scalia’s concerns. It is, rather, a way of saying that he joins Chief Justice Roberts in his rejection of the majority opinion, but for different reasons. He accepts full responsibility for this, as indicated by the use of ‘in my opinion’, which gives rise to the strategy of subjectivization to signal that what is being said is personal and subjective, and not necessarily the truth (Namsaraev, 1997).

In (19) below, ‘I do not suggest’ is used to hedge disagreement with a previous decision taken at a lower level, which Justice Alito, in this concurring opinion, terms current lower court case law. He hedges disagreement because the previous decision is useful for the case at hand, which he contends is an
outlier, an anomaly. Therefore, the previous case law with which he generally disagrees can be relevant to this particular anomaly. Justice Alito manages to appear to disagree with the previous case law, while agreeing with it at the same time.

(19) Despite the breadth of some of these formulations, however, the term "property" plainly does not reach everything that a person may hold dear; nor does it extend to everything that might in some indirect way portend the possibility of future economic gain. I do not suggest the current lower court case law is necessarily correct, but it seems clear that the case now before us is an outlier and that the jury’s verdict stretches the concept of property beyond the breaking point. Sekhar v. United States (2013)

Equally, in Supreme Court opinions, suggest is used with the deictic ‘this’ in the negative to clarify a position and strengthen an argument:

(20) This is not to suggest that attorneys may not obtain DPPA-protected personal information for a proper investigatory purpose. Maracich v. Spears (2013)

Examples (21), (22) and (23) below also show how ‘suggest’ is used in impersonal constructions to carry out depersonalization, which is more common in both genres than personal ‘I’ or ‘we’ constructions which carry out subjectivization. One impersonal construction that appears more frequently in Supreme Court opinions, especially dissents, than in law review articles is ‘existential it + adjective + suggest’. Interestingly, the adjective in this construction generally has a negative value as in the case of ‘odd’, ‘wrong’ and
‘doubtful’. Toska (2012), as may be remembered from 2.7, found that UK Supreme Court justices used hedging to express epistemic attitude on a given issue. U.S. justices appear to do the same, explicitly expressing a stance or value judgment especially in dissents when the majority view is being challenged. This is not common to law review articles in which such categorical expressions of stance, even concerning views which a writer may wish to challenge, could be seen as outside the accepted discourse community norm.

The justices who wrote the examples below use an explicit, unnuanced, direct statement (it is odd/wrong/doubtful) in conjunction with a weakening device (to suggest) in order to hedge their criticism of a given view, usually the majority view, ultimately strengthening their own argument by the very mention of an opposing viewpoint.

(21) It is also quite odd to suggest that the problem with North Carolina’s law would go away if only the State provided some sort of study substantiating the idea that one-third was a good approximation in most cases. Wos v. E. M. A. (2013)

(22) But it is wrong to suggest that this was uncontroversial at the time, or that this Court blessed universal fingerprinting for “generations” before it was possible to use it effectively for identification. Maryland v. King (2013)

(23) It seems most doubtful to me to suggest that States have some lesser concern when what is involved is their own historic role in the conduct of elections. Arizona v. The Intertribal Council of Arizona (2013)
More commonly in both genres, however, ‘suggest’ is used with ‘abstract rhetors’ (Hyland, 1996a). In law review articles, such abstract rhetors can be ‘example’, ‘analysis’, ‘article’, ‘approach’ or ‘account’ for example. These are used to express an indirect opinion and distance the writer from the claim being made. The writer displaces the responsibility for the claim on to some inanimate or abstract object so that if the claim is challenged, that abstract object will become the target of the challenge. In the academic context, concealing himself behind abstract subjects allows the writer to save face. ‘Suggest’, in the following examples can be defined as “to show that (something) is likely or true: to indicate (something) usually without showing it in a direct or certain way” (Merriam-Webster, 2014).

(24) As these examples suggest, and as my empirical analysis confirms, districts’ geographic compactness has little connection to their level of spatial diversity. A district may be shaped very strangely but be very spatially homogeneous, and vice versa (Stephanopoulos, 2012: 1968).

(25) One important account argues that the separation of powers safeguards federalism. This Article suggests the reverse: Federalism safeguards the separation of powers (Bulman-Posen, 2012: 462).

(26) The analysis above suggests that coordination can improve efficiency, effectiveness, and accountability, overcoming the dysfunctions created by shared regulatory space and often furthering, or at least not frustrating, the purported benefits of functional fragmentation (Freeman and Rossi, 2012: 1197).
(27) This quotation suggests a way in which a natural rights framework could survive comfortably within an agency (and a larger Administration) that embraced legal positivism (Tani, 2012: 340).

(28) The evidence suggests that the probability that he committed each one of these offenses is 95% (Porat and Posner, 2012).

(29) Yet the limited data available suggest that as a percentage of total annual rules, joint rules constitute a small share: 3.9% for 2010 (Freeman and Rossi, 2012: 1166)

Such abstract rhetors can also be found in Supreme Court opinions as well, however less frequently due to the fact that Supreme Court justices seldom fear loss of face arising from challenges by the reading public. When writing a Supreme Court opinion, justices have no reason to conceal themselves. What they say is binding and cannot be legally challenged. Thus, the following example is not offering a hypothesis for consideration, but rather indicates that the justices are conscious of the limitations of and exceptions to their argument.

(30) The examples suggest that the litigation exception has a limited scope to permit the use of highly restricted personal information when it serves an integral purpose in a particular legal proceeding. Maracich v. Spears (2013)

Example (31) suggests limitation also, but refers to a particular ‘approach’ used by one of the parties. Similar to (21), (22) and (23) above, the writer is clearly expressing his stance regarding the approach which he describes as
‘inappropriate’. He attenuates his criticism by using ‘suggest’. In other words, the approach has been suggested, but not proven. The approach is vaguely termed ‘inappropriate’ which contrasts with the ‘precise, complex and exhaustive’ approach used in Title VII.

(31) The approach respondent and the Government suggest is inappropriate in the context of a statute as precise, complex, and exhaustive as Title VII. University of Texas Southwestern Medical Center v. Nasser (2013)

Example (32) uses ‘suggest’ in the negative to highlight what is lacking in a particular ‘phrase’.

(32) That phrase does not suggest a line between a considered rejection of a claim and an unconsidered, inadequately considered, or inadvertent rejection. Johnson v. Williams (2013)

‘Abstract rhetors’ can also include a single fact or issue as in examples (33), (34) and (35) below:

(33) That said, the high rate of remarriage suggests that the narrative of marriage as an institution that will foster personal satisfaction, happiness, and joy is pervasive and individuals remarry (and remarry and remarry) in the hope of eventually securing a marriage that succeeds on all of these fronts (Murray, 2012: 4).

(34) An unexplained large reverse payment itself would normally suggest that the patentee has serious doubts about the patent’s survival. Federal Trade Commission v. Activis (2013)
The first two words of the phrase, “lawfully made,” suggest an effort to distinguish those copies that were made lawfully from those that were not, and the last three words, “under this title,” set forth the standard of “lawful[ness].” Kirtsaeng v. John Wiley & Sons (2013)

As stated before, ‘suggest’ can also be used as a quotative verb, indicating that information is second-hand, as in the examples below. Here, ‘suggest’ means ‘to mention (something) as a possible thing to be done, used, thought about” (Merriam-Webster 2014). Others verbs which could have been used include ‘state’ which can be defined as “to express (something) formally in speech or writing”, ‘contend’ which can be defined as “to argue or state (something) in a strong and definite way” (Merriam-Webster, 2014), or ‘argue’ meaning “give reasons or cite evidence in support of an idea, action, or theory, typically with the aim of persuading others” (Oxford Dictionary, 2014). As Hyland has explained, choice of a quotative verb can specify commitment to what is reported (Hyland, 1996a: 266-67). Neither ‘state’ nor ‘contend’ capture the epistemic uncertainty inherent in ‘suggest’ regarding whether the proposed action will be carried out, however. ‘Suggest’ is more tentative, and in the academic context, which has been seen, tentativeness can lead to broader acceptance of one’s arguments. The subjects in (36) and (37) below, that is Redish and Hills are working within the academic context, proposing possibilities for fellow academics to consider, not making categorical
assertions. In addition, use of ‘suggest’ perhaps indicates less acceptance of their proposals by the writer than would use of ‘contend’.

(36) Professor Redish has suggested that a statute preventing federal courts from adjudicating constitutional claims against federal officials might violate the Due Process Clause—unless state courts were permitted to adjudicate these claims (Grove, 2012: 258).

(37) In a provocative symposium essay, Roderick Hills suggests that cooperative federalism may promote separation of powers values by allowing states to compete with the federal executive branch for authority to implement federal law (Bulman-Posen, 2012: 472).

In Supreme Court opinions, a proper name such as Hillman in (28) often refers to one of the parties involved in the legal case, and ‘suggest’ is used to report the party’s arguments. For example in No. 11-1221 Jacqueline Hillman, petitioner v. Judy A. Maretta, several referring verbs were used to report Hillman’s arguments including ‘contend’ and ‘argue’. In addition to indicating degree of commitment to a proposition, choice of lexical verb can indicate stance (Hyland, 1996a: 266-67). It is clear that some value judgement is being transmitted through the choice of these lexical verbs as ultimately the Court did not agree with Hillman. This could be a case of weakening Hillman’s claims to strengthen the Court’s arguments against her. Hillman ‘contended’, ‘suggested’, ‘argued’ and ‘attempted to distinguish’, but ultimately did not ‘prove’ or ‘convince’. The fact that his passage appears in the ‘Reasoning’ move as opposed to the ‘Case History’ one supports this idea.
(38) We are not persuaded by Hillman’s additional arguments in support of a different result. Hillman contends that *Ridgway* and *Wissner* can be distinguished because, unlike the statutes we considered in those cases, FEGLIA does not include an “anti-attachment provision.”... Next, Hillman suggests that Wissner and Ridgway can be set aside because FEGLIA contains an express preemption provision and that conflict pre-emption principles ordinarily do not apply when that is so.... Hillman further argues that *Ridgway* is not controlling because a provision of FEGLIA specifically authorizes an employee to assign a FEGLI policy, whereas SGLIA’s implementing regulations prohibit such an assignment... Finally, Hillman attempts to distinguish *Ridgway* and *Wissner* because Congress enacted the statutes at issue in those cases with the goal of improving military morale. *Hillman v. Maretta*, (2013)

The same is true when ‘suggest’ is accompanied by such subjects as ‘respondents’, ‘petitioners’, ‘the Majority’ or ‘the Court’ in Supreme Court opinions. ‘Suggest’ seems to imply less agreement with the subjects’ viewpoints. Indeed in (39) the Court did not find in favor of the respondent, and in (40) the dissent, from which this example has been taken, disagrees with the majority view of the ‘Court’.

(39) Respondents also suggest that they should be held to have standing because otherwise the constitutionality of §1881a could not be challenged. *Clapper v. Amnesty International USA* (2013)

(40) The Court suggests that the problem created by the second scenario is excusable because the plaintiffs will lose anyway on alternative merits
In (38), (39) and (40) above, the justices express a negative value judgement. Similarly, (41), (42) and (43) below express value judgments such as ‘incorrect’, ‘right’ or ‘wrong’. That relates back to the genre’s communicative purpose of deciding the case at hand and providing a clear rationale. This explicit marking of stance serves to make the utterance speculative, as opposed to quotative.

(41)   Hillman is incorrect to suggest that FEGLIA’s express pre-emption provision renders conflict pre-emption inapplicable. Hillman v. Maretta (2013)

(42)   The majority is therefore right to suggest that these “precedents make clear that patent-related settlement agreements can sometimes violate the antitrust laws.” Federal Trade Commission v. Activis, (2013)

(43)   The Court’s opinion is wrong to suggest that the rule of lenity does not apply to governmental penalties so long as they are payable to private individuals and labeled “liquidated damages,” rather than “criminal fines.” Maracich v. Spears (2013)

In summary, when used with personal reference, ‘suggest’ is employed in law review articles to propose a possible course of action or interpretation of events for consideration. Use of ‘suggest’ seems dialogically expansive, indicating that the writer is willing to entertain dialogically alternative positions. When used in impersonal constructions, or with abstract rhetors, ‘suggest’ is
used to express an indirect interpretation of events or actions. The writer
displaces the responsibility for the interpretation on to some abstract object so
that if it is challenged, that abstract object will become the target of the
challenge. These strategies are important in the academic context.

By contrast, in Supreme Court opinions, ‘suggest’ is used with personal
reference almost exclusively in the negative form allowing the writer to weaken
an opposing view and strengthen his own. As Supreme Court justices have no
need or desire to conceal themselves behind abstract subjects, use with such
subjects is limited, and can often serve to indicate that the justices are aware
that their decisions are limited in scope. In addition, Supreme Court justices
use ‘suggest’ to convey stance and value judgments, many of which are
negative in nature, especially concerning arguments put forth by majority
opinions or parties in a legal dispute. This seems fitting within the adversarial
legal system comprised of two opponents, each fighting for its side in a case.
6.2.2 Believe

‘Believe’ was the second most frequent lexical verb in the corpus with 3.3 instances per 10,000 words in law review articles and 3.0 instances per 10,000 words in Supreme Court opinions. The most frequent meaning of ‘believe’ in the sub-corpora is “to hold as an opinion” (Merriam-Webster, 2014).

As a speculative verb, ‘believe’ was mainly found in impersonal constructions signaling the strategy of depersonalization. In this way it is used to diminish the writer’s responsibility for the proposition, thus minimizing any threat to face which could be caused by embarrassing opposition, or conflictive or contradictory evidence presented by another author. ‘Believe’ was not notably found in the passive, but it was often seen with existential subjects such as ‘it’ and ‘there’. In fact, a common pattern found in both genres was ‘there is reason to believe’ which indicates that a subjective opinion has a basis in fact, but distances the writer from the opinion and responsibility for the claim.

In legal terms ‘reason’ refers to the justification or rationale for issuing an order or judgment. In logic, which deeply influences legal thought, ‘reason’ can be defined as “a premise of an argument in support of a belief” (Oxford Dictionary, 2014). Therefore, ‘reason to believe’ means, fundamentally, that there is

\[\text{58There were 73 such instances in law review articles and 98 in Supreme Court opinions.}\]
justification for an opinion, and that justification is formed by a premise, or
“a proposition antecedently supposed or proved as a basis of argument or
inference” (Merriam-Webster, 2014). ‘Reason to believe’ balances ‘reason’, an
item meant to strengthen a claim by supporting its truth value, with the hedge
‘believe’. It would be very different to say, for example, ‘reason to affirm’.

(44) Accordingly, there is **good reason to believe** that Roosevelt’s Attorney General Homer Cummings and Reagan’s Attorneys General William French Smith and Ed Meese were acting in accordance with their leaders’ wishes when they opposed efforts to strip jurisdiction (Grove, 2012: 302).

(45) There is **no reason to believe** Congress wished to leave protection of the parental rights of a subset of ICWA “parent[s]” dependent on the happenstance of where a particular “child custody proceeding” takes place. Adoptive Couple v. Baby Girl (2013)

In addition, particularly in law review articles, ‘believe’ was used with non-
specific, unnamed rhetors which also allow the writer to avoid personal
responsibility for a proposition, shielding him from negative reaction.
Nevertheless, the writer is speculating on a situation and offering a personal
interpretation of it. In (46) and (47) below, use of ‘might’ and ‘likely’ make the
claim less categorical and fuzzier, signaling the use of the strategy of
indetermination.

(46) **Such a legislator might also believe** that Congress in 1973 knew so little about which species should be protected ten or twenty or thirty years in the future—or even how many species might require protection—that specific rules (Biber, 2012: 520).
(47) Yet meteorologists are far more skeptical of climate change than climate scientists, and far more likely to believe that humans are not causing any climate change that is occurring, perhaps because of their own travails in dealing with the problems of forecasting weather in short time periods (Biber, 2012: 474).

‘Believe’ was also used with first person pronouns in the corpus, particularly in Supreme Court opinions in which it was most commonly used with the singular pronoun ‘I’ signaling subjectivization. In particular ‘I believe’ often appears in the concluding paragraphs of dissents which could be due to the adversarial nature of United States common law. Supreme Court justices do not feel the need to conceal their identity behind third parties and abstract, impersonal subjects. Given that the Supreme Court is the highest review court, justices do not feel threatened by opposing views. Indeed, as per the adversarial systems, contrary views and opinions are met directly. Nevertheless, while a justice (or the law clerk writing up the decision on his behalf) does not avoid personal responsibility for any claims made, ‘believe’ clearly identifies a claim as a personal opinion, as opposed to fact:

(48) In sum, I believe that the majority has substituted a line based on indeterminate geography for a line based on realistic considerations related to basic Fourth Amendment concerns such as privacy, safety, evidence destruction. Bailey v. United States (2013)

(49) For these reasons, I believe that the Fifth Amendment prohibits a prosecutor from commenting on Salinas’s silence. I respectfully dissent from the Court’s contrary conclusion. Salinas v. Texas (2013)
By contrast, in law review articles, ‘believe’ was much more frequently used with the plural pronoun ‘we’. Both ‘I’ and ‘we’, when used with a lexical verb, can indicate the hedging strategy of subjectivization to signal that what is being said is personal and subjective, and not necessarily the truth. Nevertheless while this strategy functions to highlight ownership and responsibility of a claim in Supreme Court opinions, in law review articles it is used to minimize ownership and play down assertiveness of a claim through shared responsibility.

This difference in use of personal reference between the two genres can be explained in terms of communicative purposes and discourse community expectations. ‘We’ can not only express views in a paper that is co-authored. The use of ‘we’ also conceals the author of a particular claim and recognizes that in the academic world, there should be a collaborative way of working. ‘We’ can make a claim dialogically expansive, indicating that this is just one view among many, and inviting discussion on the point:

(50) We believe that Reagan was right on the merits and on the absence of an obligation to exercise a line item veto in order to set up a test case for judicial resolution (Devins and Prakash, 2012: 528).

(51) Alternatively, we might seek to insulate the regulatory- or management-decision makers from a discipline that we believe will undermine those policy goals (Biber, 2012: 474).

(52) We believe this approach may be too narrow—and that, on occasion, party-plaintiffs may
be able to bring subsequent stand-alone claims (Bloom and Serkin, 2012: 592).

Utterances (50) and (51) above seem quite certain, particularly due to the use of ‘will’ in (51). Nevertheless, the lexical verb ‘believe’ clearly indicates to the reader that this is a personal opinion, thus mitigating the force of the proposition. Example (52) has been further toned down by the use of the modal ‘may’ which when used in a dialogically expansive way as it is here invites alternative opinions because “simply, categorical assertions leave no room for dialogue” (Hyland, 1996a: 258). As Hyland explains:

So here hedges appeal to readers as intelligent colleagues capable of deciding about the issues, and mark statements as merely provisional. This interpersonal role is reinforced by institutional obligations to engage in debate with fellow [legal scholars]. (1996a: 258)

In summary, ‘believe’ is used more often in law review articles as a writer-oriented hedge, protecting the writer from the reading public. As such it is frequently used with existential subjects (it, there) and abstract and unnamed rhetors to signal depersonalization which aids to conceal or minimize authorial presence. It is also used with the pronoun ‘we’ to signal subjectivization and invite dialogue, even opposing views, in the collaborative world of academia.

By contrast, ‘believe’ is frequently used in Supreme Court opinions in conjunction with the first person pronoun ‘I’. Supreme Court justices are very
willing to assume personal responsibility for their claims in the adversarial context of the legal system. In addition to ‘believe’, incidence of ‘suggest’ was also frequent in the corpus.

The two most frequently used speculative verbs, ‘believe’ and ‘suggest’ have been reviewed and examples provided. The following sub-section will address the three moderately frequent speculative verbs found in the corpus, ‘depend’, ‘tend’ and ‘think’.
6.2.3 Depend

‘Depend’ can be defined as “be based on or contingent on”. With this definition, there were 2.1 instances per 10,000 words in law review articles and 1.3 instances in Supreme Court opinions. Thus, it is a moderately frequent lexical verb in both sub-corpora, but more commonly found in law review articles. ‘Depend’ allows for writers to convey speculative judgments on the nature of the relationship between two items in an indirect way. For example, in the following the writer postulates that a specific outcome is based on, or contingent on the existence of certain ‘touchy’ variables:

(53) This outcome depends on touchy variables, of course, including how one person anticipates another person’s response to pessimistic conventional wisdom about the future (Samaha, 2012: 1578)

A more direct, unhedged phrasing of the above could be the following. However this phrasing indicates a high degree of certainty and commitment to the truth value of the proposition while the original does not:

(53a) Touchy variables cause the outcome.

This phrasing would be less acceptable, particularly in a law review article which should conform to disciplinary norms regarding the epistemic nature of knowledge, and the subsequent dislike of such categorical assertiveness. “If

59 ‘Depend’ can also be defined “place reliance or trust” as in: You can depend on me. However examples with this meaning were excluded.
one thing depends on another, it is changed or affected by the other” (Macmillan Dictionary, 2014). As phrased in (53a), there is some room for speculation that the variables may not appear, and the change, or outcome, may not come about. The writer can speculate that, if such variables do appear, a specific outcome will be realized.

In Supreme Court opinions ‘depend’ commonly appears in the simple present, seemingly indicating a fact. This seems logical in a genre which transmits binding decisions which cannot be challenged. The following examples seem quite strong and certain.

(54) The Court’s opinion depends on the following assumption: Plaintiffs will either (1) establish materiality at the merits stage, in which case class certification was proper because reliance turned out to be a common question, or (2) fail to establish materiality. Amgen v. Connecticut Retirement Plans and Trust Funds (2013)

(55) The substance and scope of this right depend upon the proper designation of the facts that are elements of the crime. Alleyne v. United States (2013)

Nevertheless, ‘depend’ is, to a degree, an indication of speculation. Thus, ‘depend’ seems to be an ‘accuracy oriented’ hedge used to “achieve precision… by indicating that a proposition is based on plausible reasoning or logical deduction in the absence of full knowledge” (Hyland,1998c: 163). ‘Depend’ can indicate depersonalization, on the one hand, as the writer
distances himself from the claim being made, and indetermination on the other as some vagueness and uncertainty is inherent in its meaning. This is true in both genres.

However, unlike Supreme Court opinions in which use of ‘depend’ is presented as fact, law review articles are more likely to adjust the strength of commitment or lack thereof to the truth value of the proposition being put forward by careful selection of the words accompanying ‘depend’ in the utterance. In law review articles, as in other academic genres, there is careful wording of both facts and opinion such that the writer conforms to the constraints of accepted presentation of knowledge while persuading the reader to accept his views.

Use of ‘depend’ can be adjusted to show more certainty. For example, the modal ‘will’ (56), and the phrase ‘X makes clear that’ (57), indicate a higher degree of commitment to the truth value of the proposition:

\[
\text{(56) Answers to those questions will depend on individual ideological commitments that I do not pretend to reconcile (Samaha, 2012: 1638)}
\]

\[
\text{(57) But the inequality makes clear that the possible efficiency of higher-cost altering rules depends on other factors as well (Ayres, 2012: 2067).}
\]
Depend' allows the writer to avoid appearing over-precise (Mauranen, 1997; Salager-Meyer, 1997). In the examples below, modal verbs such as ‘may’ and epistemic adjectives such as ‘likely’ weaken the commitment to the proposition:

(58) Indeed, the prospects for successful presidential coordination likely will vary depending on the reason why Congress structured delegations of authority as it did, and whether the President's efforts frustrate an intentional design (Freeman and Rossi, 2012: 1202).

(59) Accountability for this ordinance may depend on imprecise political processes, and the extent of the actual costs may depend on peculiar political dynamics (Bloom and Serkin, 2012: 618).

While law review articles seem more inclined to adjust the strength of certainty of an utterance through choice of accompanying words, this phenomenon is by no means unknown to Supreme Court opinions as the following example illustrates.

(60) Under Title VII, an employer’s liability for such harassment may depend on the status of the harasser. Vance v. Ball State University (2013).

In summary, ‘depend’ is used in two strategies, depersonalization and indetermination, to indicate the nature of the relationship between two items in an indirect way. 'Depend' is used twice as much in law review articles than in Supreme Court opinions, however, perhaps indicating that these two strategies are more common in the former than in the latter. That would be in line with what is expected of an academic genre which should reflect the uncertain
nature of knowledge by making statements vaguer, and less categorical. In addition, law review articles often strive to distance themselves from a claim so that they cannot be personally held responsible for it, as well as to appear dialogically open to other viewpoints.

In Supreme Court opinions, ‘depend’ is commonly found in the present tense which increases its strength, and the justices’ commitment to it. In the present tense, left unmodified through the use of epistemic modal verbs or adverbs, ‘depend’ seemingly indicates a fact, which would be in line with what is expected of a binding, operational document such as the Supreme Court opinion. However, the uncertainty inherent in ‘depend’ allows some epistemic doubt to be expressed. Law review articles are much more likely to adjust the strength of commitment to the claim ‘depend’ is used in through the addition of certain mitigating or strengthening items such as ‘may’ or ‘will’.
6.2.4 Tend

Unlike ‘depend’ which, when used in the present tense seemingly transmits a fact, some degree of uncertainty is inherent in ‘tend’. ‘Tend’ can be defined as “to exhibit [a] tendency” and a ‘tendency’ is “a quality that makes something likely to happen or that makes someone likely to think or behave in a particular way” (Merriam-Webster, 2014). Tendencies are not facts, then, but likelihoods.

In law review articles there were 1.8 instances of ‘tend’ per 10,000 words. By contrast, ‘tend’ is seldom found in Supreme Court opinions probably because Supreme Court opinions, being binding legal documents, in general feel less need to couch facts and opinions with uncertainty and tentativeness than do law review articles.

Like ‘depend’, however, ‘tend’ is used in the sub-corpora as an ‘accuracy oriented’ hedge allowing the writer to avoid appearing over-precise. For example, in the following, the writer speculates on the inclination exhibited by the average person using the abstract rhetor ‘people’. ‘People’ is too indefinite for a Supreme Court opinion in which the exact ‘people’, meaning the petitioner and the respondent, are clearly known and should be specifically referred to:

(61) People tend to prefer a 100 percent chance of gaining $500 over a 50 percent chance of gaining $1,200, even though this means choosing an expected $500 gain over an expected $600 gain (Horowitz, 2012: 360).
(62) *People tend* to live near other people who are similar to them (a phenomenon that geographers refer to as “Tobler’s First Law”) (Stephanopoulos, 2012: 1914).

(63) Otherwise ethical people will tend to opt out of public service, while those most comfortable with corrupt bargains are more likely to select in (Samaha, 2012: 1612).

Similarly, the writer speculates on tendencies exhibited by a party to a legal case in (64):

(64) *Party error will tend* to lead the parties to undertake inefficient behavior—for the simple reason that a party who is uninformed about the terms to which (a court will find) she has consented is less likely to conform her actions to best perform her duties or best prepare to enjoy her contractual entitlements (Ayres, 2012).

A common pattern is ‘tend + to be + adjective’, such as ‘tend to be observable’ as in (65) below, or ‘tend to be + noun phrase’ as in ‘tend to be observers’ as in (66). This allows the writer to speculate on characteristic traits (65) and likely roles (66). Again, the fact that these patterns are seldom seen in Supreme Court opinions

(65) *Since fiscal distress tends to be readily observable*, distressed municipalities can self-identify in a manner that facilitates collective action in lobbying (Gillette, 2012: 308).

(66) *Most observers of politics tend to be casual observers*, and even careful observers have difficulty distinguishing politicians on questions of ethics.
In summary, like ‘depend’, ‘tend’ is used to carry out two strategies, indetermination and depersonalization. It is seldom used in Supreme Court opinions, however, as Supreme Court opinions seem to rely on both depersonalization and indetermination to a lesser degree than law review articles. The justices seem quite willing, in general, to claim responsibility for their propositions and opinions whereas article writers prefer to distance themselves from a proposition and any subsequent challenges concerning it.

In addition, its inherent uncertainty and use in expressing likelihood as opposed to fact makes ‘tend’ less than ideal for Supreme Court opinions which, as binding legal documents, should be seen to be dealing in legal and material facts instead of speculating on likely behavior and events. While speculation does take place most notably in the reasoning move of the Supreme Court opinion, justices favor use of the modal verb ‘would’ to strengthen their argument by weakening a claim to the contrary, presenting it as unlikely or impossible (See 5.1). Finally, ‘tend’ is often used with the subject ‘people’ in law review articles, which would prove too vague for a Supreme Court opinion that should center on the dispute between two concrete parties. Nevertheless, ‘tend’ is ideal for a genre such as the law review article which is expected to reflect the epistemic nature of knowledge,
and which uses vagueness in the negotiation of meaning with a reader who has real power to challenge the writer’s views.
6.2.5 Think

Think’ can be defined as “to have an opinion about someone or something” (Merriam-Webster, 2014). ‘Think’ is more significant in general in Supreme Court opinions than in law review articles with 2.1 instances per 10,000 words. Not only did ‘think’ seem to play a greater role in Supreme Court opinions, but also it was used differently than in law review articles. Instances of ‘think’ in Supreme Court opinions were 40% more likely to be used as a speculative verb than a quotative verb. The opposite was true, however, for law review articles in which ‘think’ was nearly 20% more often quotative than speculative.

As has been seen before, the different uses of ‘think’ can be linked to the communicative purposes and generic constraints of each genre. Supreme Court opinions are binding documents aimed at settling a particular dispute while at the same time clarifying a point of constitutional law. In the decision, Supreme Court justices are expected to justify and explain their decisions and so may opt for a verb such as ‘think’ which clearly indicates that an opinion is being expressed.

Law review articles, by contrast, as with comparative academic genres, strengthen their claims by supporting them with other expert opinions. Opinions

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60 It is important to point out that the most significant lexical verb in Supreme Court opinions appeared only 4.3 times in 10,000 words.
are quite often expressed indirectly through the choice and organization of other sources in the text; first person 'I believe' or 'I think' is generally avoided as too categorical or lacking in sufficient evidence.

Used as a speculative verb, ‘think’ was often found with both ‘I’ and ‘we’ in Supreme Court opinions signaling subjectivization which marks a statement as a subjective opinion and clearly indicates responsibility for the statement. In fact there were 22 instances of ‘I + think’ in Supreme Court opinions and 26 of ‘we + think’. ‘I think’ was found more frequently in dissents, where the dissenting justice clearly assumed ownership of an opinion which differed from that of his legal adversary:

(67) But while I disagree with the result to which the majority’s analysis leads it in this case, I think it more important to point out that its analysis leads no further. Moncrieffe v. Holder (2013)

‘We think’, by contrast, was found in majority opinions which put forward the binding opinion of the Court as a whole. Use of ‘we’ reflects not only that several members of the Court hold the same opinion, but shows unity as well as strength of conviction and belief in the underlying rationale.

(68) We think McCutchen would not have foreseen that result when he signed on to the plan. US Airways, Inc., in its capacity as fiduciary and plan administrator of the US Airways v. McCutchen (2013)
In law review articles there were 12 instances of ‘I think’ and 24 of ‘we think’. Clearly article writers avoid such direct, categorical assertions as would be signaled by ‘I think’. Such assertions could potentially expose them to discredit in the academic world if challenged by holders of opposing views. ‘We think’ by contrast provides ‘safety in numbers’ and indicates that other scholars support a similar view.

(69) On balance, however, I think it is an inferior rule. While it may be less subject to forum-shopping at the time the couple decides to marry, it is subject to a different form of manipulation (Baude, 2012: 1418).

(70) We think, then, that all parties will work as hard to win in the typical first case as in the challenging second (Bloom and Serkin, 2012: 592).

While use of the first person subject is significant in the two sub-corpora, more often than not opinions are expressed indirectly through the strategy of depersonalization. That is true in two-thirds of the cases in Supreme Court opinions and in over half the cases in law review articles. Indirect opinions are expressed by using the impersonal ‘one’ subject as in (71) and (72), or existential ‘it’ constructions as in (73) and (74), or the passive as in (75), (76) and (77). Here, ‘think’ can be defined as “to regard as” (Merriam-Webster, 2014):

(71) One might also think that appearance and reality are points on the same dimension rather than categorically different concepts (Samaha, 2012: 1570).
(72) **One would have thought** it too obvious to mention that this Court is duty bound to enforce AEDPA, not amend it. Mcquiggin v. Perkins (2013)

(73) Instead, it is useful to **think** of altering rules as the rules that govern the displacement of particular default consequences with alternative consequences (Ayres, 2012: 2046).

(74) Through the lens of software programming, it is **natural** to **think** of menus and the disclosure of altering rules as being tied together (Ayres, 2012: 2052).

(75) The model can be thought of as a model of software confirmation (Are you sure you want to delete this file?) or restaurant confirmation (Are you sure you want it spicy?), and also as a model of requiring a more costly altering rule to displace a legal default. (Ayres, 2012: 2066).

(76) **Decisions** in which no one rationale commands a majority of the Court—including prominent decisions based on the views of a single Justice—are often thought to have precedential effect. Alleyne v. United States (2013)

(77) Already appears also to disclaim any need to determine whether there is a real likelihood it will produce a **new product** that, first, is not a colorable imitation of its existing product line, and, second, might be thought to infringe Nike's trademark. Already v. Nike (2013)

It is interesting to note, also, the use of the pattern ‘modal verb + think’ in the active voice as in (71), (72) as well as the passive voice as in (75) and (77) above. In addition to expressing a personal opinion, as opposed to a fact, through the use of ‘think’, these utterances further mitigate the proposition,
adding vagueness and uncertainty to it through the addition of epistemic modal verbs. As evidenced by the examples, this occurs in both genres.

As with the verb ‘believe’, ‘think’ is also frequently used in its non-finite form (to + think) and a common pattern in both genres is ‘reason to think’ as in the example from a law review article below. Like ‘reason to believe’, ‘reason to think’ means, fundamentally, that there is justification for an opinion, and balances ‘reason’, an item meant to strengthen a claim by supporting its truth value, with the hedge ‘think’.

(78) Yet there is reason to think that Waxman defended the CDA not because he believed reasonable arguments could be made in its defense but, in large part, because Congress and the Clinton White House had rebuked Solicitor General Drew Days for failing to defend a child pornography statute in the Knox case. See supra notes 234–238 and accompanying text (Devins and Prakash, 2012: 560).

In Supreme Court opinions, ‘reason to think’ is generally used in the negative, however, perhaps to make explicit what premises were effectively ruled out when reasoning the outcome of the case:

(79) There is no reason to think that those mechanisms are insufficient to provide noncitizens with any relevant, nonprivileged documents needed in litigation. McBurney v. Young (2013)

While used primarily speculatively in Supreme Court opinions, indicating a speculative opinion, in law review articles ‘think’ is used mostly as a quotative
verb indicating a second-hand opinion. These second-hand opinions support the claims made in the articles, as is expected in an academic genre. In general, in law review articles, when used quotatively, ‘think’ was used in the past tense, ‘thought’, often contrasting a past opinion with a present reality. In (80), for example, a rise in product liability cases has not lead to uniform choice-of-law rules.

(80) In particular, Gottesman thought that a rise in product liability cases against corporations would cause them to successfully lobby for uniform choice-of-law rules at least in that area. Yet that never happened (Baude 2012: 1402).

In Supreme Court opinions, by contrast, ‘thought’ is often used narratively as in (81) in which Justice Alito explains one of the reasons behind the Election Clause, passed at the Virginia Convention in 1788.

(81) Because the States are closer to the people, the Framers thought that state regulation of federal elections would “in ordinary cases . . . be both more convenient and more satisfactory.” The Federalist No. 59, p. 360 (C. Rossiter ed. 1961) (A. Hamilton). Arizona v. The Intertribal Council of Arizona (2013)

‘Think’ is not used exclusively in the past tense, however, and it can be used quotatively in Supreme Court opinions as in (82) below. As in a law review article, the justice below uses the opinions of ‘others’ to support his own claim. Or rather, he uses the lack of consensus among ‘others’ to support his own claim. That is, he strengthens his argument by weakening the claims of others, a common technique especially in the adversarial context of Supreme Court
opinions. As is required in a Supreme Court opinion, this is necessary to justify the holding in a case as well as define a point of constitutional law. This excerpt is from a majority opinion supporting states’ right to allow or prohibit same-sex marriage.


At present, no one—including social scientists, philosophers, and historians—can predict with any certainty what the long-term ramifications of widespread acceptance of same-sex marriage will be. And judges are certainly not equipped to make such an assessment. The Members of this Court have the authority and the responsibility to interpret and apply the Constitution. Thus, if the Constitution contained a provision guaranteeing the right to marry a person of the same sex, it would be our duty to enforce that right. But the Constitution simply does not speak to the issue of same-sex marriage. United States v. Windsor (2013)

In conclusion, due to differing purposes and constraints ‘think’ is used differently in the two genres. It is used mainly speculatively in Supreme Court opinions to express an opinion which serves to justify and explain the reasoning behind a decision. It is often employed to carry out the strategy of
subjectivization through the use of ‘I think’ and ‘we think’. ‘I think’ appears to be more common in dissents in which a justice claims responsibility for his opposing opinion in an adversarial context. ‘We think’ is more common in majority opinions where it expresses unity and strength of conviction. In law review articles, ‘we think’ seems to point to a ‘safety in numbers’ mentality.

‘Think’ is used mainly quotatively in law review opinions. Thus, it is used in the strategy of ‘depersonalization’ to distance the writer from a claim, while simultaneously indicating expert opinion support for a claim. This is fitting in an academic genre where a writer wishes to show inclusion in the discourse community in order to persuade the wider reading public of the acceptability of his arguments.

6.2.6 Consider

Consider can have several meanings, the most frequent one in the subcorpora being deontic, “think about something carefully especially in order to make a decision” or “take into account” (Merriam-Webster, 2014). For example:

(83) The Government again petitioned for certiorari. It asked this Court to consider two questions: (1) Whether Congress violated the Compensation Clause when it extended the Medicare and Social Security taxes to the salaries of sitting federal judges; and (2) If so, whether any such violation ended when Congress subsequently increased the salaries of all federal judges by an amount greater than the new taxes. United States v. Hatter (2001: 565)
The next step is to consider how the law treats individual choice of marital names (Emens, 2007: 809).

‘Consider’ is often used in article introductions, or in transition sentences, as a means by which the author highlights the content of the article or section:

In this Part, we consider potential objections to our framework (Bell and Parchomovsky, 2001: 609).

However, the epistemic meaning targeted in this study was “regard someone or something to have a specific quality” (Merriam-Webster, 2014). Hyland (1998c:120) suggested that ‘consider’ was synonymous with ‘believe’, “to accept or regard (something) as true” (Merriam-Webster, 2014)”. However, due to an added element of judgement, ‘consider’ seems synonymous with ‘deem’ or “to come to think or judge” (Merriam-Webster, 2014). ‘Consider’ was used in the sub-corpora rather infrequently with epistemic meaning, with 0.9 instances per 10,000 words in law review articles and 0.3 instances in Supreme Court opinions. Thus, once results were refined by verifying meaning of the verb in context, ‘consider’ proved infrequent as a hedge.

As a hedge, ‘consider’ was often used in the strategy of subjectivization with the personal subjects ‘I’ or ‘We’ and followed by an adjective, thus making the stance towards the object apparent. This is more commonly seen in the operational legal document, the Supreme Court opinion, rather than the
academic law review article as in the latter explicit stance is not common given that it can appear overly assertive and invite unwanted challenges. ‘We consider’ is more frequent than ‘I consider’ in Supreme Court opinions, especially in majority opinions where it indicates unity and strength of conviction. In (86), the justices explicitly express their confidence in their opinion through the adjective ‘confident’.

(86) Confident that the statute does just what McMillan said it could, we consider petitioner’s argument that § 924(c)(1)(A)(ii) is unconstitutional because McMillan is no longer sound authority. Harris v. United States (2002: 556)

(87) Thus, in the direct appeals of cases that are not yet final, we consider the “time of review” interpretation the better reading of Rule 52’s words “plain error.” Henderson v. United States (2013)

More often, however, in both genres, ‘consider’ is used to express a subjective, personal opinion in an indirect way, through depersonalization, using an impersonal subject such as ‘the Court’ as in (88) below, or ‘many’ as in (89), or ‘the majority’ as in (90). Impersonal ‘it-cleft’ constructions as in (91) are also used. In all of the examples, the pattern ‘consider X + adjective’ is observed.

(88) The Court considers this a “relevant,” but not “dispositive” factor. Maracich v. Spears (2013)

(89) Allowing segregation would require changes in procedure that many would consider undesirable (Porat and Posner, 2012: 37).

(90) The majority may consider this scheme unwise. Adoptive Couple v. Baby Girl (2013)
(91) It would seem that a power apparently considered to be fundamental to the framework of our Government must be a judicial power rather than a mere incident of jurisdiction, subject to regulation and control by Congress (Grove, 2012: 272).

Passive constructions as in (91) appeared in the corpus, which again distinguishes use of ‘consider’ from use of ‘believe’ which rarely appeared in the passive. Passive constructions were often used in conjunction with a modal verb such as ‘can’, ‘should’, ‘might’ or ‘would’. Passive constructions diminish the role of the subject as they forefront the object relegating the subject to a secondary position. This in turn removes the responsibility for the proposition from the subject, the author. Including epistemic modal verbs in the utterances serves to make the proposition less certain and diminishes the author’s presence and responsibility even further.

In addition ‘be considered’ can be followed by both an adjective (84) and a noun (92), (93) and (94) in both genres. What distinguishes the Supreme Court opinion examples below (92) and (93) from the law review examples (94) and (95), however, is a sense of authority. Used with ‘can’ and ‘should’, ‘be considered’ seems to be deontic, expressing what is possible or what is strongly recommended. Nevertheless there is a small epistemic doubt expressed as to whether the possibilities and recommendations will be carried out. The justices stop short of expressing an obligation though the use of ‘may’ or ‘shall’ which, legalistically, express obligation. ‘Might’, in (94), however,
clearly expresses epistemic uncertainty as befitting an academic genre. ‘Would’ in (95) expresses a likely outcome to a condition expressed in the clause beginning ‘so long as’, a variant of the ‘if clause’.

(92) Upon these considerations the Court concludes that DNA identification of arrestees is a reasonable search that can be considered part of a routine booking procedure. Maryland v. King

(93) Against this background of lawful same-sex marriage in some States, the design, purpose, and effect of DOMA should be considered as the beginning point in deciding whether it is valid under the Constitution. United States v. Windsor (2013)

(94) This type of cross-person aggregation might therefore be considered normative, but there is also a factual version (Porat and Posner, 2012: 44).

(95) So long as Redhail maintained his indigent status, his daughter would be considered a public charge, and thus he would not be permitted to marry under the statute (Murray, 2012: 44).

In summary, ‘consider’ allows the writer to add some judgement value to an utterance. This judgement is frequently expressed in a direct way in Supreme Court opinion through the use of personal pronouns ‘I’ or, more commonly ‘we’. To attenuate the judgement made, in both genres ‘consider’ can be used with impersonal or abstract subjects. Written in the passive along with epistemic modal verbs, ‘consider’ can also express some uncertainty or lack of commitment.
Nevertheless, use of ‘consider’ in the corpus is limited. Law review articles, in general, avoid making such explicit judgements and taking such explicit stance in favor of presenting what could be considered a more balanced and objective argument. This is in line with what would be expected of academic genres. Supreme Court opinions make greater use of other lexical verbs such as ‘believe’ or ‘think’ along with personal reference, especially ‘I’, to make their stance clear.
6.2.7 Expect

“Expect” can have several different meanings. One meaning, for example, is “to consider bound in duty or obligated” (Merriam-Webster, 2014). Perhaps given the legal nature of the genres comprising the sub-corpora, most instances of ‘expect’, particularly those used in passive constructions, conformed to this definition as illustrated by the following:

(96) Married women were expected to run the household and care for husbands and children (Murray, 2012: 34).

Which can be paraphrased:

(96a) Married women were considered bound in duty to run the household and care for husbands and children.

This example, like most in the corpus, appears to have more narrative than epistemic value when the context is taken into account. Thus, most examples of ‘expect’ did not have hedging potential, and were more neutral in stance. Consequently the vast majority of instances of ‘expect’ were omitted from consideration in this study.

However, ‘expect’ can also be defined as “to consider probable or certain” (Merriam-Webster, 2014). While quite strong in comparison with other epistemic lexical verbs in terms of the commitment it conveys to the truth value
of a proposition, its epistemic value comes from the fact that there is doubt as to whether what is expected will actually take place.

(97) Lawmakers who back these statutes expect that they will be defended in court (Devins and Prakash, 2012: 550).

This could be paraphrased as follows:

(97a) Lawmakers who back these statutes consider it probable / certain that they will be defended in court.

Thus, considering only those instances in which a paraphrase with the definition ‘consider probable or certain’ can clearly be applied, the epistemic use of ‘expect’ in the two sub-corpora appears rather infrequent, with only 0.8 per 10,000 words in law review articles, and 0.3 per 10,000 words in Supreme Court opinions. In the epistemic sense, ‘expect’ was often used in the first person with the subject ‘we’, the use of ‘I’ being far less common. In this way, in law review articles, personal responsibility for a proposition is shared among authors, or among members of a discourse community, thus mitigating commitment to it.

(98) We expect corrective justice theorists to oppose cross-person aggregation, since such aggregation would require taking into account wrongs committed toward third parties while determining the remedies available to the plaintiff against the defendant. (Porat and Posner, 2012: 58)

(99) That is, in cases where the delegation scheme is meant to help lawmakers deliver benefits to constituent groups, and presidential coordination would frustrate that goal, we can expect
congressional resistance (Freeman and Rossi, 2012: 1202).

In Supreme Court opinions, however, use of ‘we’ highlighted the collective responsibility of the majority opinion, showing strength of conviction and consensus.

(100) **We can expect** that, as a consequence of restricting the supervisor category to those formally empowered to take tangible employment actions, victims of workplace harassment with meritorious Title VII claims will find suit a hazardous endeavor. Vance v. Ball State University (2013)

In Supreme Court opinions, use of ‘I’ signaled a dissenting opinion, appropriate to an adversarial context.

(101) **I expect** that majority’s inexact use of the term “abandon[ment]” will sow confusion, because it is a commonly used term of art in state family law that does not have a uniform meaning from State to State. Adoptive Couple v. Baby Girl (2013)

More frequently, however, in both genres, personal responsibility for the proposition was mitigated through the use of an impersonal subject such as ‘one’, shielding or protecting the writer from negative reaction. Utterances were weakened further through the use of the modal verbs ‘can’, ‘would’ and ‘might’.

(102) **One can expect**, in the future, frequent challenges to the denial of government funding for relevant ideological reasons. Agency for International Development petitioners v. Alliance for Open Society International (2013)
(103) In any event, it is hard to see why a presumption about the effect of federal law on the conduct of congressional elections should have less force when the federal law is alleged to conflict with a state law. If anything, one would expect the opposite to be true. Arizona v. The Intertribal Council of Arizona (2013)

(104) As such, one might expect that the two duties would be coterminous (Devins and Prakash, 2012: 512).

Another way for the writer to distance himself from the proposition was to use impersonal existential ‘it’ constructions like the following.

(105) With the executive branch agreeing that the statute is unconstitutional, it seems reasonable to expect that more courts will follow suit (Baude, 2012: 1376).

Thus, epistemic ‘expect’ was used similarly in both sub-corpora. Writers generally balance the rather high degree of commitment to the truth value of the proposition inherent in ‘expect’ with impersonal constructions and with accompanying epistemic modal verbs to distance themselves from personal responsibility for the claim. Perhaps due to the high degree of commitment expressed with ‘expect’ it is less frequent in the corpus.
6.2.8 Indicate

There were 1.2 instances of ‘indicate’ per 10,000 words in law review journals, and 0.8 instances per 10,000 words in Supreme Court opinions. Therefore, ‘indicate’ is a relatively infrequent verb, but more common to law review journals than Supreme Court opinions.

In both genres, ‘indicate’ appears to be used in similar ways. However, the lack of frequency in Supreme Court opinions could be due to the fact that ‘indicate’ is one resource which can be used to distance the writer from the proposition, protecting him from unwanted challenges. That is because ‘indicate’ is never used with personal reference (* I/we indicate), but rather with impersonal abstract and unnamed rhetors which serve to deflect attention from the true writer. Supreme Court justices have little need or desire to distance themselves from their claims as they are members of the highest review court with binding powers. Law review articles, however, which hail from the world of academia do commonly employ strategies which distance the writer from the claims.

‘Indicate’, used epistemically, can have different meanings. Firstly, it can be defined as “to be a sign of, strongly suggest” (Oxford Dictionary, 2014). With this meaning, ‘indicate’ is used with abstract rhetors such as ‘press reports’, ‘experiments’ or ‘findings’ as in the following examples:
(106) Press reports indicate a similar phenomenon (Gillette, 2012: 304).

(107) The study’s findings, however, indicated that racial discrimination in voting remains “concentrated in the jurisdictions singled out for preclearance.” Shelby County, Alabama v. Holder (2013)

(108) Both historical and contemporary statutory context indicate that Congress, when writing the present version of §109(a), did not have geography in mind. v. John Wiley & Sons (2013)

When used with specific yet unnamed rhetors such as ‘this Court’, ‘indicate’ does not necessarily distance the writer from a proposition, but rather highlights the consensus reached in making the proposition. In example (109), ‘indicate’ can be defined as “to demonstrate or suggest the necessity or advisability of” (Merriam-Webster, 2014). Its epistemic value lie in the fact that a necessity is ‘suggested’, not ordered’, and there is no certainty that the suggestion will be implemented.

(109) Contrary to the Court’s suggestion, this Court’s precedents do not indicate that a formal agency relationship is necessary. Hollingsworth v. Perry (2013)

In example (110) ‘indicate’ can also be defined as “to express an intention, opinion, or wish in an indirect way” (Macmillan Dictionary, 2014). Presumably none of the unnamed researchers in question explicitly stated that ‘several factors might be relevant’, but rather different researchers suggested distinct factors which the writer wishes to synthesize.
The use of the modal verb ‘might’ indicates the writer's lack of commitment to the truth value of the proposition.

(110) Researchers indicate that several factors might be relevant, including the novelty of the situation and the incentives for observers to acquire accurate information (Samaha, 2012: 1595).

In all of the examples above, ‘indicate’ is used in the strategy of depersonalization as a writer-oriented hedge distancing the writer from the responsibility for the claim. This seems to be its main function in both law review articles and Supreme Court opinions. However, its low frequency in Supreme Court opinions suggest that this genre is less concerned with concealing identity for a claim in general, which has been borne out in the discussion thus far.
6.2.9 Predict

Predict is defined as “to declare or indicate in advance; especially: foretell on the basis of observation, experience, or scientific reason” (Merriam-Webster, 2014). The following example illustrates the epistemic nature of ‘predict’ and uses the item in apposition with its definition “to guess at the answer”:

(111) The judge is thus left to guess at the answer — to predict, as a tentative judicial stand-in, what the state supreme court would do. Her guess may be right. It may be wrong. But more interestingly and perhaps more troublingly, her guess may “take” property (Bloom and Serkin, 2012: 614).

There are 1.2 instances per 10,000 words of ‘predict’ in law review articles, while its frequency in Supreme Court opinions is negligible. Perhaps that is because law review articles represent an academic genre, and claims made in these genres are generally based on observation, experience or scientific reason. Supreme Court opinions, however, represent a juridical genre, necessarily basing claims on evidence seen in court.

A common pattern seen in the sub-corpora is ‘It is difficult / hard / impossible to predict’ or ‘one is unable / cannot reasonably predict’, indicating a negative connotation in legal writing, often stemming from legal uncertainty. This pattern is much more common in law review articles which, from an academic perspective, often address such uncertainty. Supreme Court opinions, on the hand, should overcome such uncertainty:
The uncertainty caused by rule proliferation is different from the uncertainty pervasive in the current copyright system, however. The current system announces a set of general norms and postpones until litigation the elaboration of those norms. Users are therefore left to predict the legal rule that a court will later apply, a rule given content ex-post (Horowitz, 2012: 370).

But under a geographical interpretation a contemporary tourist who buys, say, at Shakespeare and Co. (in Paris), a dozen copies of a foreign book for American friends might find that she had violated the copyright law. The used book dealers cannot easily predict what the foreign copyright holder may think about a reader’s effort to sell a used copy of a novel. Kirtsaeng v. John Wiley & Sons (2013)

Although this framework guarantees a certain amount of freedom to use copyrighted works, the access provided is uncertain because users cannot reasonably predict the lines a court will draw (Horowitz, 2012: 344).

In conclusion, while speculation plays an important role in a Supreme Court opinion, ‘predict’ is rarely used in this genre. That is because the justices are not tasked with foretelling certain future outcomes of their decisions, but rather they might speculate on past events and past motives in order to reach a decision. Legal disputes arise from past events, and Supreme Court opinions ultimately address legal disputes. That aim precludes the need to use a verb oriented towards the future.

Law review articles, on the other hand, are not concerned so much with what led to a legal decision, but with the decision’s future consequences. Some
resource is needed to speculate on future outcomes of a present decision, and ‘predict’ offers one clear way. As the most frequent speculative verbs in the corpus have been addressed, it is now time to turn our attention to the deductive verbs.
6.3 Deductive lexical verbs

‘Deductive’ lexical verbs help to indicate that a deductive conclusion is being presented, and along with speculative lexical verbs comprise the category of judgmental hedges. However, while speculative lexical verbs were the most frequent in the two sub-corpora, deductive lexical verbs were the most infrequent. There was only one frequent deductive verb in the corpora: ‘assume’.

The predominance of speculative verbs has been addressed in 6.2, but it is interesting to venture why there are so few verbs in the deductive category in both genres. According to the Merriam-Webster dictionary, ‘speculative’ means “based on guesses or ideas about what might happen or be true rather than on facts” (2014). By contrast, ‘deductive’ is defined as “using logic or reason to form a conclusion or opinion about something” (Merriam-Webster, 2014). Speculation seems less certain than deduction, especially given that speculation deals with ‘guesses’ and ‘what might be true’. Deduction, on the other hand, appears less concerned with certainty of a proposition and more concerned with the process by which one reaches a conclusion. The preponderance of speculative verbs over deductive verbs in both sub-corpora could be due to the need and desire to highlight that limited knowledge and an incomplete set of variables may have been involved in making a claim as opposed to the process by which the claim was arrived at.
Two deductive verbs appeared frequently in the corpus: presume and assume. ‘Presume’ appeared frequently in Supreme Court opinions, but upon contextual analysis it was found that ‘presume’ was not used epistemically, but rather in the legal technical meaning “to accept legally or officially that something is true until it is proved not true” (Merriam-Webster, 2014). In fact, the only epistemic deductive verb to appear with a degree of frequency in both sub-corpora was ‘assume’ which can be defined as “suppose to be the case, without proof” (Oxford Dictionary, 2014), or “to think that something is true or probably true without knowing that it is true” (Merriam-Webster, 2014). 61 This assumption that something is true is often based on past experiences, for example, but clearly ‘assume’ expresses a higher degree of uncertainty, or lack of commitment, than perhaps other deductive verbs such as ‘deduce’.

6.3.1 Assume

There were 2.2 instances per 10,000 words of ‘assume’ in law review articles, and 1.6 instances per 10,000 words in Supreme Court opinions. While ‘assume’ was more common in law review articles, it ranked higher in importance in Supreme Court opinions in comparison with other lexical verbs.

61 Concordances in which ‘assume’ had the meaning “to begin (a role, duty, etc.) as a job or responsibility… to take or begin to have (power, control, etc.) in a job or situation” (Merriam-Webster, 2014) were excluded. Also excluded were instances in which ‘assume’ was used as an imperative. For example: Assume that killing the person is lawful if either condition is valid (Porat and Posner, 2012: 46).
The most common non-finite form in both sub-corpora was ‘assume’. Use of ‘assume’ with first person pronouns, mainly ‘we’, was noticeable. Use of ‘we’ gives rise to subjectivization which functions to mitigate a claim by indicating that it is a personal opinion rather than a fact. Use of ‘we’, in turn, distances the writer or writers from personal responsibility for a claim by attributing it to several writers.

In Supreme Court opinions, however, use of ‘we’ seems to emphasize that the claim is adhered to by a majority of the justices giving the decision more credibility. In fact, ‘we’ is used frequently in majority opinions but not in dissents.

(115) We are willing to assume for argument’s sake that sometimes it is possible actually to use for water transPoration a structure that is in no practical way designed for that purpose. Lozman v. Riviera Beach, Florida (2013)

(116) For purposes of answering this question, we assume that Congress has complied with the Constitution’s Ex Post Facto and Due Process Clauses. United States v. Kebodeaux (2013)

(117) We may assume that Terry would fall within the definition of supervisor the Court adopts today. Vance v. Ball State University (2013)

However, in law review articles, more frequently ‘assume’ was used with unnamed rhetors shifting the responsibility for the claim from the writer to a

---62 There were 14 such instances in law review articles and 12 in Supreme Court opinions.
third party, for example in (118) to ‘advocates of safe harbors’, in (119) ‘plenary power scholars’, or in (120) ‘the public, scientists and policy makers’. The claim itself is actually an assumption on part of the writer, but is presented as an assumption made by a third party, shielding the writer from negative reaction or challenges.

(118) Those who advocate safe harbors assume that users have greater access to copyrighted works under a system of safe-harbor clarity with uncertainty at the margins than under a system of pervasive uncertainty (Horowitz, 2012: 366).

(119) These “plenary power” scholars do generally assume that Congress’s authority is constrained by constitutional sources other than Article III, and that the federal courts can enforce such “external” constraints—although they often dispute the scope of those limits (Grove, 2012: 256).

(120) On the one hand, the public, scientists, and policy makers often fail to understand the importance of the value choices and preferences hidden in the assumptions, inferences, and interpretations needed to translate incomplete science into policy decisions. Instead, they assume a “linear” model of science and policy in which science determines facts that in turn determine policy options (Biber, 2012: 478).

Such unnamed rhetors as those in the examples above are uncommon in Supreme Court opinions. Rather, Supreme Court opinions generally opt for ‘the majority’ or ‘the Court’ which differ from the ones above in that, though unnamed, they are not unidentified. Both ‘the majority’ and ‘the Court’ refers to those justices who agreed with the majority opinion. They are most often used by dissenting justices to refer to their legal adversaries.
The Court assumes that those statutes were divisible, but as I have explained, it is possible that they were not. Descamps v. United States (2013)

And so, the question the majority answers should never arise—which means the analysis the majority propounds should never apply. The majority assumes that an individual claim has become moot, and then asks whether collective allegations can still proceed by virtue of the relation-back doctrine. Genesis Healthcare v. Symczyk (2013)

In a similar fashion abstract rhetors can shift the responsibility from the writer to a ‘claim’ or an ‘example’ which removes responsibility even further from the writer.

Charitably interpreted, this claim assumes that lawyers do not, and cannot, know anything about legislative processes. My quarrel is with that assumption (Nourse, 2012: 134).

The example assumes away all judicial error and party error. The purpose of the potentially higher-cost altering rules is not to better inform the contractors or the courts, who are assumed to be perfectly informed about the legal consequences of both the default and its alternative—and ignoring alteration costs, all contractors at least mildly prefer Ž to provision Z (Ayres, 2012: 2085).

Focused as they are on uncertainty borne by potential users, these proposals rely on a common behavioral premise: potential users are less likely to use copyrighted works when the law governing use is uncertain. This premise does not assume user rationality (Horowitz, 2012: 358).

The present participle form ‘assuming’ is uncommon in law review articles, but in Supreme Court opinions it appears almost as frequently as ‘assume’.
Perhaps that is because ‘assuming’ is “used for the purpose of argument to indicate a premise on which a statement can be based” (Oxford Dictionary, 2014). A Supreme Court opinion not only reaches a conclusion or holding in regards to a dispute, but also must justify and explain it not only for the parties directly involved, but also for future courts. In addition, ‘assuming’ appears quite frequently with first person pronouns, the singular ‘I’ and ‘my’ in dissents to indicate an opposing personal viewpoint (126) and (127), and the plural ‘we’ and ‘our’ in majority opinions to express unity of agreement (128).

(126) Assuming Congress adopted §602(a)(1) to permit market segmentation, I suspect that is how Congress thought the provision would work—not by removing first-sale protection from every copy manufactured abroad (as John Wiley urges us to do here), but by enabling the copyright holder to control imports even when the first-sale doctrine applies (as Quality King now prevents). Kirtsaeng v. John Wiley & Sons (2013)

(127) In any event, §3 of DOMA, in my view, does not encroach on the prerogatives of the States, assuming of course that the many federal statutes affected by DOMA have not already done so. United States v. Windsor (2013)

(128) Rather, assuming for the sake of argument that he is a “parent,” we hold that neither §1912(f) nor §1912(d) bars the termination of his parental rights. Adoptive Couple v. Baby Girl (2013)

As seen in (126) and (127), assume can often be found in dissents. Its use allows dissenters to pinpoint the flaw in the logic of the majority, an erroneous assumption, and allows the dissenting justice to add a layer of value judgment.
to his proposition, which is often observed in Supreme Court opinions. In fact, value judgement is inherent to the genre as its main purpose is to judge. This layer of value judgement is seldom seen in law review articles as they do not wield the same degree of authority. Interestingly, however, at least in (129) the use of ‘seem’ reinforces the hypothecality of the claim, thus mitigating it.

(129) The Court seems to assume that a statute like this enumerates alternative elements, ante, at 17–18, but the Michigan courts have held otherwise. Descamps v. United States (2013)

By contrast, the use of ‘willing’ in (130) is more forceful as ‘willing’ can be defined as “ready to do something without being persuaded” (Merriam-Webster, 2014). The writer seems to imply that the majority did not base their reasoning on persuasive argument.

(130) The majority is willing to assume, for the sake of argument, that Birth Father is a “parent” within the meaning of ICWA. Adoptive Couple v. Baby Girl (2013)

As has been seen, ‘assuming’ is not always accompanied by first person pronouns, especially in law review articles. (131) presents a more indirect claim with the subject of the clause beginning ‘assuming’ being ‘public law’. Responsibility for the assumption is displaced from the writer to ‘public law’:

(131) Public law treats conflicts as a technical backwater, assuming that whatever substantive federalism decisions are made can be executed by the relevant conflicts rule (Baude 2012: 1430).
Finally, ‘assume’ is used quite often in the company of other hedges including lexical verbs such as ‘appear’, modal verbs such as ‘may’ or ‘would’ highlighting its epistemic value:

(132) Both intentionalism and purposivism tend to exacerbate this problem because they appear to assume that there will be a unanimous intention when, as Congress’s procedures make clear, the majority (or in most cases today, a supermajority) prevails (Nourse, 2012: 127).

(133) Given the DOJ’s oft-expressed fealty to the duty to defend, some may assume that the President’s powers would be greatly augmented even if he enforced (but did not defend) laws he believed were unconstitutional (Devins and Prakash, 2012: 570).

(134) I would assume that Congress intended the statute’s jurisdictional reach to match the statute’s underlying substantive grasp. Kiobel v Royal Dutch Petroleum (2013)

In conclusion, the only deductive verb to appear with some frequency in the corpus was ‘assume’, perhaps because its epistemic value is higher than other deductive verbs such as ‘deduce’ as it implies that an assumption is not based on evidence. ‘Assume’ was often found with the first person plural pronoun ‘we’ in both genres, however for different reasons depending on whether the genre was academic or juridical. While ‘we’ serves to blur or conceal the identity of the writer and distance him from commitment to and responsibility for an assumption in law review articles, in Supreme Court opinions it served to highlight the inclusive nature of the consensus reached in a majority opinion. In
addition, in law review articles, ‘assume’ was used most frequently in conjunction with abstract and unnamed rhetors, again distancing the writer from the claim made. By contrast, in Supreme Court opinions, the form ‘assuming’ was often seen, indicating a premise on which an argument was based.

Thus, as has been a common pattern, writers of Supreme Court opinions seem more willing to identify, and be identified. They are more willing to assume responsibility for their claims, which is to be expected from a binding document written by a member of the highest review court within an adversarial system.
6.4 Quotative lexical verbs

Analysis A4 showed that law review articles used quotative verbs just over 20% more often than did Supreme Court opinions. However this significant difference in numbers of quotative verbs was probably due to the difference in overall verbal hedging and obscures an important distinction, namely that Supreme Court opinions tended to favor quotative verbs almost as much as speculative ones, while the difference in use of speculative and quotative verbs in law review articles was vast. While Supreme Court opinions favored speculative verbs over quotative verbs by just under 10%, law review articles showed a 44% preference for speculative verbs.

Quotative verbs allow writers to justify their propositions by referring to the reports of others. Legal writers, like the scientific writers in Hyland’s study, rely heavily on second-hand evidence to support their own claims. In the case of law review articles, a second-hand view, introduced by a quotative verb such as ‘argue’ in (135) below often precedes the use of a claim presented as a personal opinion, introduced below by ‘we believe’.

(135) Kahan and Rock argue that the proxy access rule would not substantially lower the costs of running a short slate contest, and that, in some respects, the costs of running a candidate using the company's proxy statement would be greater than running a candidate in the traditional manner. While we agree with Kahan and Rock that the number of actual candidates under a shareholder access regime may very well be small, we believe that Kahan and Rock
give too little weight to the potential for more meaningful “constructive engagement” between large shareholders and the company under a proxy access regime, when the “stick” of a proxy access candidate is lurking in the background (Stratmann and Verret, 2012: 1438).

The juxtaposition of second-hand information to support personal opinion could explain to some extent the predominance of speculative verbs in law review articles. Often the second-hand supporting statement is presented with more brevity than the author’s personal claim. However, preponderance of speculative verbs can also be explained by examining the communicative purposes of each genre.

Law review articles are both expository and persuasive pieces of writing, and as such, they serve mainly educational and interpersonal purposes. Law review article writers strive to present their claims in such a way that they will accepted as part of a larger body of research on a specific area. The high proportion of speculative to quotative verbs could indicate the degree to which law review writers present cautious positions, marking their claims as ‘guesses’ as opposed to facts, and indicating openness to other viewpoints. Making sure to present a claim as one possibility among various seems more important than supporting those claims with second-hand sources in law review articles.

By contrast, judicial decisions are operative as they seek to modify legal relations; thus, balancing opinion and fact, in the form of second-hand sources,
is a bigger concern to Supreme Court opinions. Supreme Court justices attempt to reconcile evidence presented during oral arguments on behalf of the petitioner and the respondent in a legal case with legal rules and principles derived from both statutory and case law. Their holding must balance what happened, ‘material facts’ presented as second-hand information, with somewhat subjective interpretation of the law. In order to fulfill the operational purpose of deciding the case at hand and giving relief to the aggrieved party, there must be a close correspondence between fact and law.

Choice of a quotative verb can indicate commitment to what is reported. Verbs used for quotative evidence both specify and acknowledge previous findings, and also take a stance towards those findings by referring to either speculative or deductive judgements (Hyland, 1996a: 266-67). The most frequent quotative verbs in the corpus including ‘argue’, ‘believe’, ‘indicate’, ‘propose’, ‘suggest’ and ‘think’, can also be used as speculative verbs. When used as quotative verbs they indicate that the source being quoted is not stating a fact, but rather offering an educated guess or opinion. In other words, writers tend to attribute second-hand evidence to conjecture as opposed to analysis (Hyland, 1996a: 268).

In summary, according to the Merriam-Webster dictionary, ‘speculate’ means “to think about something and make guesses about it; to form ideas or theories about something usually when there are many things not known about it”
(2014). The need to fulfill an operational purpose allows for little guesswork on part of the justices. Their decisions must reflect that many things are, in fact, known about the case hence the use of quotative verbs to link known facts precedent from reliable sources, those directly involved in the case and their lawyers, with reasoned judgment.

Law review writers, by contrast, engage far more in speculation, synthesizing the opinions of other experts into a coherent theory. This theory is presented as conjecture, however, lest more categorical affirmations lead to disproval by the discourse community.

This section reviews quotative verbs and their role in both Supreme Court opinions and law review articles. The main quotative verbs found in the corpus included ‘argue’, ‘believe’, ‘indicate’, ‘propose’, ‘suggest’ and ‘think’. As explained in 2.2.1, some verbs can be either speculative or quotative depending on their use. It was found that ‘indicate’, ‘believe’, ‘suggest’ and ‘think’ were primarily speculative in the corpus, and therefore these verbs were discussed in 6.1. ‘Argue’ and ‘propose’ were primarily quotative, which is why they will be addressed in this section.

6.4.1 Argue

‘Argue’ was the most significant quotative verb found in both sub-corpora with 7.2 instances per 10,000 words in law review articles, and 4.3 instances per 10,000 words in Supreme Court opinions. In the case of ‘argue’ many
instances in context were eliminated as they did not convey epistemic value. For example, 227 law review article instances were omitted because ‘arguing’ was used in references to summarize content:

(136) See Brief Amicus Curiae of the Bipartisan Legal Advisory Group of the United States House of Representatives in Support of Affirmance at 7, Dickerson, 530 U.S. 428 (No. 99-5525) (arguing Miranda created a “non-constitutional[] rule designed to ‘allow the Court to avoid the constitutional issues associated with state interrogations’” (quoting Dickerson, 166 F.3d at 688)) (Devins and Prakash, 2012: 566).

There were 28 instances of ‘argued’ used as a past tense narrative in Supreme Court opinions, and these were also eliminated. In these instances, ‘argued’ was not used epistemically, but rather in the procedural history of the case at hand.

Epistemically, ‘argue’ can be defined as “give reasons or cite evidence in support of an idea, action, or theory, typically with the aim of persuading others to share one’s views” (Oxford Dictionary, 2014). In this sense, ‘argue’ is often used to convey the views of a particular author, enabling these views to serve as reported evidence to support the writer’s own views. The writer, however, is distanced from the proposition and shielded from criticism or negative reaction because the views expressed are attributed to another party. This is particularly true in law review articles because, as representatives of an academic genre, supporting views from other expert sources add weight to the propositions expressed. The supporting views send
a message to the reading public, indeed to the discourse community, that the writer is not alone in his opinions. It invites others to join the writer and his apparent supporters in a particular viewpoint, and encourages acceptance of the viewpoint. Use of a third party subject and a lexical verb, as has been seen, leads to the strategy of indetermination making the writer's commitment to the viewpoint vague. As has been noted before, the lexical verb can be found in the present tense as in (137) and (138), the present perfect tense as in (139) and (140) below or the past tense as in (141) depending on the specific law review's style sheet.

(137) By contrast, Kahan and Rock argue that proxy access is largely not important (Stratmann and Verret, 2012: 1438).

(138) Mark Lemley and Eugene Volokh argue that injunctions are the real problem for liberty (Horowitz, 2012: 380).

(139) Professor Vermeule has argued that the legislative history of the Alien Contract Labor Act supports Justice Scalia's plain meaning interpretation (Nourse, 2012: 121).

(140) More recently, however, legal historian Ariela Dubler has argued that the concern with eugenics provides only one frame for reading Skinner and its discussion of marriage and procreation (Murray, 2012: 42).

(141) Friedan argued that these policies offered a particularly "blatant[]" illustration of the way in which employers push women out of the workforce and compel them to assume dependent roles in marriage (Franklin, 2012: 1350).
In Supreme Court opinions, named rhetors, such as Bormes or Smith below, are usually one of the two parties in litigation. In (142), Bormes is the respondent in the case being decided by the course, and in (143) Hillman is the petitioner, thus ‘argue’ appears in the present simple. In both extracts, some value judgement is expressed. The Court disagreed with both Bormes (142) and Hillman (143) (see 6.1.2 for more on this case). To convey this, the Court used a now familiar pattern of mitigating Bormes’ and Hillmans’ claims in order to strengthen its own argument. Even though Bormes and Hillman both gave reasons in support of an idea, they ultimately did not persuade the Court of its validity.

(142)  **Bormes argues** that whether or not FCRA itself unambiguously waives sovereign immunity, the Little Tucker Act authorizes his FCRA damages claim against the United States. The question, then, is whether a damages claim under FCRA "falls within the terms of the Tucker Act," so that "the United States has presumptively consented to suit." *Mitchell II, supra*, at 216. It does not. United States v. Bormes (2013)

(143)  **We are not persuaded by Hillman’s additional arguments in support of a different result.... Hillman further argues that Ridgway is not controlling because a provision of FEGLIA specifically authorizes an employee to assign a FEGLI policy, whereas SGLIA’s implementing regulations prohibit such an assignment. Hillman v. Maretta (2013)

In addition to using a petitioner’s or respondent’s proper name, ‘petitioners’ (144) or ‘the plaintiff’, for example, can fulfill the same function as they are unnamed yet specific rhetors. In (145), the ‘government’ refers to the
respondents in the case. By enlarging the context, it becomes clear that in *Gabelli* the Court agreed with the petitioner (144), but not with the respondent (145).

(144) **Petitioners argue** that a claim based on fraud accrues—and the five-year clock begins to tick—when a defendant’s allegedly fraudulent conduct occurs. This is the most natural reading of the statute. *Gabelli and Alpert v. Securities and Exchange Commission* (2013)

(145) The Government nonetheless argues that the discovery rule should apply here...This Court, however, has never applied the discovery rule in this context. *Gabelli and Alpert v. Securities and Exchange Commission* (2013)

Nevertheless while there are instances such as (145) above, more often than not Supreme Court justices employ the strategy of mitigating a claim, using ‘argue’ for example, to strengthen their own argument as in (146) below.

(146) **The dissent** also turns to the record to argue that, in light of voting discrimination in Shelby County, the county cannot complain about the provisions that subject it to preclearance. But that is like saying that a driver pulled over pursuant to a policy of stopping all redheads cannot complain about that policy, if it turns out his license has expired. *Shelby County, Alabama v. Holder* (2013)

Mitigating a claim to strengthen an argument is not exclusive to Supreme Court opinions, though it does seem more widespread. In the following extract from a law review article it is clear that the writer is using the same strategy to disagree with the government’s proposition.
(147) The government argued that a district court's declaratory judgment that the act is unconstitutional should not be deemed immediately effective without a holding that the eBay test was satisfied. That the federal government and district court took seriously the possibility that eBay could be the key to healthcare reform’s continuing enforceability should cause even a casual observer to take notice (Gergen, et al., 2012: 206).

While ‘argue’ is used mainly as a quotative verb in the corpus, it can also be used speculatively with, impersonal subjects such as ‘one’, abstract rhetors such as ‘this article’ or unnamed rhetors such as ‘some’ to distance the writer from the proposition. This is particularly true in law review articles in which a claim may be made intentionally vague as the writer attempts to conceal his identity. More categorical utterances are inappropriate in this academic genre.

(148) More generally, one might argue that Congress embraces state law as a means of furthering its objectives to the extent it does not preempt state law that occupies the same field as federal law (Bulman-Posen, 2012: 480).

(149) This Article has argued that federal administrators funneled rights language into local welfare offices, attempting to legitimize New Deal welfare reform and, more generally, the modern liberal state. (Tani, 2012: 381).

(150) Accordingly, Part V argues that transparency in our depiction of marriage and the right to marry is insufficient (Murray, 2012: 8).

(151) Some argue that heuristics and biases are adaptive (Horowitz, 2012: 364).

(152) Some might argue that sexual liberty of this sort is untenable (Murray, 2012: 62).
Many commentators argue that Congress has plenary power over federal jurisdiction (Grove, 2012: 256).

Rarely is ‘argue’ used with personal reference in the form of first person singular and plural pronouns. Such instances in law review articles can usually be found in the introduction (in the present or future tense) or the conclusion (in the past or present perfect tense).

I argue that they are better understood as statutory interpretation questions, though they are still questions that borrow concepts from conflicts (Baude, 2012: 1376)

Throughout our analysis, we have argued that the President cannot ignore his obligation to interpret the Constitution and act on that interpretation (Devins and Prakash, 2012: 574).

In summary, ‘argue’ is used mainly as a quotative verb in the corpus. It is used with named rhetors in law review article to lend weight to the writer’s argument, but at the same time allows him to distance himself from the claims being made, thus shielding him from potentially face-threatening incidents.

In Supreme Court opinions ‘argue’ is used with unnamed, yet specific rhetors, mainly the parties involved in the litigation. It lends weight to the justices’ reasoning by providing information about the evidence on which it was based. It also allows the justices to express their stance with regard to a proposition, often leading to some value judgement. In both genres, though most notably in
Supreme Court opinions, it is used to weaken a claim in order to strengthen the writer's argument.

As a speculative verb, 'argue' is most often used with abstract or unnamed rhetors, distancing the writer from the claim and weakening his commitment to the truth value of the proposition. 'Argue' is rarely used with personal reference except in introductions or conclusions to articles.
6.4.2 Propose

‘Propose’ is a relatively infrequent lexical verb with only 0.7 instances per 10,000 words in law review articles and 0.2 in Supreme Court opinions.63 ‘Propose’ can be defined as “to suggest (something, such as a plan or theory) to a person or group of people to consider” (Merriam-Webster, 2014). In law review articles, the subject is a frequently a named rhetor, usually a scholar which the writer quotes to support his own views.

(156) Fisher proposes legalizing file sharing, taxing relevant devices, and sharing the tax revenues among those whose files are shared in proportion to downloads (Horowitz, 2012: 384).

(157) Frederick Schauer and Richard Zeckhauser propose aggregating probabilities across cases outside the judicial context (Porat and Posner, 2012: 10).

(158) Several years ago, Michael McConnell and Randal Picker proposed that bankruptcy courts do indirectly what they could not do directly by using the authority to reject or confirm a municipal debt adjustment plan in order to induce the debtor municipality to levy taxes on its residents, even if the same court had no authority to order the same increase (Gillette, 2012: 286).

Supreme Court opinions, however, as in examples (159) and (160) do not often refer to the specific rhetor by name, but by title in the legal case. Example

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63 Instances of ‘proposed’ used as an adjective (e.g. proposed rules) and ‘proposing’ used in citations were eliminated.
(161), written by Justice Scalia in a dissent, names the author of the majority opinion.

(159) Respondent-lawyers propose a broader reading of (b)(4), arguing that any use tied to an identified “transaction, occurrence, [or] defect” should be permissible. Tr. of Oral Arg. 58. Their reading, however, fails to account for all the words in (b)(4), most notably the provision’s focus on a “proceeding.” Maracich v. Spears (2013)

(160) Perhaps sensing the incoherence of the “jurisdictional-nonjurisdictional” line, the dissent does not even attempt to defend it, see post, at 5, but proposes a much broader scope for de novo judicial review. Arlington, Texas v. Federal Communications Commission (2013)

(161) Scalia in a dissent: To be sure, if Congress cannot invoke our authority in the way that Justice Alito proposes, then its only recourse is to confront the President directly. United States v. Windsor (2013)

Rarely is ‘propose’ used as a speculative verb as in the example below:

(162) We propose something to fill that gap in court accountability: suits against the courts (Bloom and Serkin, 2012: 620).

In summary, ‘propose’ is similar in meaning to ‘suggest’, but is much less frequent. In addition, while the former is used mainly as a quotative verb, the latter is mainly speculative in the corpus. Perhaps, then, the preponderance of ‘suggest’ in the corpus as compared to ‘propose’ stems from the fact that there is an overall predominance of speculative verbs in the two genres.
6.5 Sensorial verbs: Appear, seem

Sensorial lexical verbs can indicate that evidence is based on the writer’s senses. Sensorial verbs played a greater role in law review articles with an average frequency of 7.6 per 10,000 words than in Supreme Court opinions which had an average incidence of 2.7 per 10,000 words. In both genres, sensorial verbs were the third most frequent category, after speculative and quotative verbs.

There were 23% more quotative verbs than sensorial ones in law review articles, but 71% more sensorial than deductive verbs in law review articles. These figures indicate a slight predominance of quotative over sensorial verbs in this genre, but a much larger gap between sensorial and deductive verbs. The questions which can be asked, then, are why this genre has such a great preference for quotative and sensorial verbs, and why there is such an avoidance of deductive verbs.

As has been seen, use of quotative verbs in law review articles can be attributed to the need to support claims with evidence from other sources. This lends weight to the writer’s argument, showing the discourse community that his views are shared by others, and inviting readers to also ratify his opinions.
Sensorial verbs largely convey impressions about what is thought to be true based on known facts. Deductive verbs, on the other hand, convey use of “logic or reason to form a conclusion or opinion about something” (Merriam-Webster, 2014). Impressions seem less certain than reasoned conclusions, thus showing more epistemic value. As has been indicated when explaining the overall predominance of speculative verbs in law review articles, it appears that writers of this genre have a tendency to adopt “pragmatically cautious positions” (Hyland, 1996a: 268), avoiding direct responsibility for their claims and eschewing categorical statements. This shields the writers from negative reaction and indicates that they are presenting one viewpoint among many, remaining open to other, even contradictory, opinions. Such a willingness to consider other opinions is a feature of academic genres.

In contrast to law review articles, Supreme Court opinions’ preference for quotative over sensorial and deductive verbs was much greater. In fact, there were 65% more quotative than sensorial verbs in Supreme Court opinions, indicating a lack of affinity to sensorial verbs by the justices. The difference between sensorial verbs and deductive verbs, however, while significant, was much smaller for Supreme Court opinions than law review articles at 41%. The question to be asked is why there is seemingly an avoidance of sensorial verbs in Supreme Court opinions.
Quotative verbs are used in Supreme Court opinions largely when referring to one of the parties in litigation. They allow the justices to take a stance with regard to the evidence or reasoning provided by the two parties, the value judgement they place on each side’s arguments being essential in their justification of their holding.

As members of the highest review court, Supreme Court justices have less need to mitigate their claims and arguments than law review article writers. After all, what the justices lay down becomes law. Saving face, avoiding conflict, and being polite in order to be accepted by the discourse community are not primary concerns when writing a Supreme Court opinion. Sensorial verbs add high epistemic value to a claim as they indicate ‘impressions’ about what might be true, and Supreme Court justices rarely find such tentativeness necessary.

The two most frequent sensorial verbs in the corpus were ‘seem’ and ‘appear’. These two verbs will be discussed in sections 6.4.1 and 6.4.2 below.

6.5.1 Seem

There are 4.7 and 1.0 instances of ‘seem’ per 10,000 words in law review articles and Supreme Court opinions respectively. Thus while use of both ‘seem’ and ‘appear’ is relatively infrequent in Supreme Court opinions, ‘seem’
is moderately frequent in law review decisions and predominates over ‘appear’ by about 20%.

‘Seem’ can be defined as “give the impression of being” or “to have a quality, appearance, etc., that shows or suggests a particular characteristic, feeling, etc.” (Merriam-Webster, 2014). In the corpus, seem’ is most frequently seen in impersonal constructions. In fact, the most common pattern in the corpora is ‘It seems/seemed’ followed by an epistemic adjective such as ‘likely’, ‘unlikely’, ‘clear’, ‘reasonable’, or ‘doubtful’. According to the Merriam-Webster dictionary (2014) ‘seem’ is “used with it to make a statement about what appears to be true based on what is known”. In such utterances, the writer highlights the epistemic doubt or certainty of his convictions, and commitment to the truth value of the proposition, depending on the adjective chosen. In the following examples, ‘clear’ and ‘lawful’ express certainty, thus a higher commitment to the truth of the statement.

(163) But if the compromise conforms to the legal requirements applicable to each agency, falls within their discretion, and can be defended on the record, then it seems lawful and consistent with the congressional design (Freeman and Rossi, 2012: 1188).

(164) Given that the Constitution never requires the President to seek opinions, never requires him to abide by any opinions received, and never grants him the authority to demand them from other branches, it seems clear that he need not accept the advice or legal conclusions that come from Congress or the courts (Devins and Prakash, 2012: 528).
By contrast, in the following examples, ‘unlikely’ and ‘possible’ express less certainty.

(165) It seems unlikely that the Constitution makes the judiciary supreme in its exposition yet greatly constrains its ability to expound (Devins and Prakash, 2012: 530).

(166) From the facts as presented by the appellate court, it seems possible that one defense (the claim that the defendant was not present when the killing took place) was not established with sufficient factual certainty, while the other defense (that the killing constituted an unforeseen independent act) fell short of the requisite normative threshold of unforeseeability (Porat and Posner, 2012: 41).

In addition to expression of certainty or uncertainty, the pattern ‘It + seems + adjective’ can express a value judgment as in the example below from a Supreme Court opinion. Value judgment is often explicitly expressed in this genre as the justices explain the reasoning behind their holdings without mitigation due to the fact that their holdings are binding. Supreme Court justices have less need to mitigate their utterances as there is no question as to their acceptance by lower courts.

(167) It seems fair to conclude that, until recent years, many citizens had not even considered the possibility that two persons of the same sex might aspire to occupy the same status and dignity as that of a man and woman in lawful marriage. United States v. Windsor (2013)
In (168) below, the adjective ‘odd’ seems to add some value judgement as well. Explicit expression of value judgement is often seen in Supreme Court opinions, but is less frequent in law review articles. However, the value judgement in the example below is somewhat mitigated by the addition of the modal verb ‘may’ in conjunction with the epistemic lexical verb ‘seem’. This makes the statement less certain and categorical which is more in keeping with what is expected in an academic genre.

(168) It may seem odd to praise interstitial law as promoting federalism (Baude, 2012: 1424).

Supreme Court justices can, nevertheless, mitigate their claims in a variety of ways. The example below employs the strategy of subjectivization through the expression ‘we see no way’ to highlight that this is a personal opinion. In addition ‘it would seem that’ makes use of the modal verb ‘would’ which is more frequent in Supreme Court opinions than in law review articles given the penchant for hypothetical and counterfactual thinking in the former (See 2.1).

(169) We see no way, however, to reconcile this half-geographical/half-non-geographical interpretation with the language of the phrase, “lawfully made under this title.” As a matter of English, it would seem that those five words either do cover copies lawfully made abroad or they do not. Kirtsaeng v. John Wiley & Sons (2013)

In addition to impersonal constructions, ‘seem’ is used with abstract rhetors such as ‘this provision’ or ‘some statutes’. This distances the writer from the
proposition and weakens his commitment to it, a strategy often employed in academic genres to shield the writer from those who do not share his view.

(170) **This provision seems to foreclose any challenge to a detainee’s “conditions of confinement” in any court** (Grove, 2012: 314)

(171) **Some state statutes seem to do the same:** they leave room, however tacitly, for inverse-condemnation actions that result from judicial decisions (Bloom and Serkin, 2012: 606).

Specific rhetors are more common in Supreme Court opinions and can include ‘The Court’, ‘the dissent’, and ‘the majority’ among other stakeholders in the decision. Use of ‘seem’ mitigates the statements by casting some doubt on the writer’s interpretation of the other party’s intentions.

(172) **The dissent seems to think** this position of ours incompatible with our reading of §1973gg–6(a)(1)(B), which requires a State to “ensure that any eligible applicant is registered to vote in an election . . . if the valid voter registration form of the applicant is postmarked” by a certain date. Arizona v. The Intertribal Council of Arizona (2013)

(173) **The majority seems to think** that even if the patent is valid, a patent holder violates the antitrust laws merely because the settlement took away some chance that his patent would be declared invalid by a court… This is flawed for several reasons. Federal Trade Commission v. Actavis (2013)

Also, in Supreme Court opinions, a frequent pattern found was ‘it seems + to me/us’ which was often followed by such epistemic adjectives as ‘implausible’ ‘impossible’, ‘unlikely’ or ‘doubtful’. This structure is very infrequent in law
review articles. As has been seen before, Supreme Court justices are more likely to take direct responsibility for their statements through the use of personal reference than law review article writers. Their claims are mitigated through the use of the strategy of subjectivization, marking their statements as personal opinions and not fact. In the examples below, they are further mitigated through the use of ‘seem’ casting some doubt on the writer’s interpretation. :

(174) The Court’s opinion, it seems to me, needlessly demeans the rights of parenthood. Adoptive Couple v. Baby Girl (2013)

(175) It seems most doubtful to me to suggest that States have some lesser concern when what is involved is their own historic role in the conduct of elections. Arizona v. The Intertribal Council of Arizona (2013)

In summary, ‘seem’, is most widely used in law review articles in the strategy of depersonalization, functioning alongside impersonal ‘it’ and abstract rhetors to distance the writer from the claim, and mitigate commitment to the truth value of a proposition, as well as to invite other opinions.

‘It seems to me’, seen most frequently in Supreme Court opinions, is used to achieve subjectivization, marking a claim as an opinion rather than fact. This also affords the writer some protection from potential face-threatening acts. In addition, ‘seem’ is seen with specific rhetors who are stakeholders in the
decision at hand to mark interpretation of another party’s intention as uncertain.
6.5.2 Appear

There were 2.9 instances of ‘appear’ per 10,000 words in law review articles as compared to 1.1 in Supreme Court opinions. Epistemically, ‘appear’ can be defined as “give the impression of being” (Oxford Dictionary, 2014) and in meaning is similar to ‘seem’. However, ‘appear’ is slightly more formal than ‘seem’ (Macmillan Dictionary, 2014), and has other meanings such as “to be or come in sight; to come formally before an authoritative body” (Merriam-Webster, 2014) which are not epistemic in nature. There is no such plurality of meanings with ‘seem’, perhaps explaining why it is favored over ‘appear’.

Like ‘seem’, ‘appear’ is often seen in impersonal constructions especially in law review articles. However, the pattern ‘it appears that’ is twice more frequent than ‘it seems that’.

(176) Accordingly, it appears that the Supreme Court’s decisions, and the Solicitor General’s corresponding arguments, have been mutually beneficial (Grove, 2012: 306).

(177) On June 25, it appeared that small firms would likely be exempt altogether based on the text of the Dodd-Frank Act (Stratmann and Verret, 2012: 1454).

In Supreme Court opinions, epistemic ‘appear’ is used similarly to ‘seem’, with specific rhetors who are stakeholders in the decision at hand. It is used with the infinitive form of a verb such as ‘to suggest’ or ‘to believe’ to indicate a
degree of uncertainty about the interpretation of the subjects words and intentions.

(178) But the dissent appears also to suggest that reverse payment settlements—e.g., in which A, the plaintiff, pays money to defendant B purely so B will give up the patent fight—should be viewed for antitrust purposes in the same light as these familiar settlement forms. Federal Trade Commission v. Actavis (2013)

(179) The Court appears to believe that Congress’ power “to ‘make Rules for the . . . Regulation of the land and naval Forces’” justifies imposing SORNA’s registration requirements on Kebodeaux. United States v. Kebodeaux (2013)

‘It appears to me/us’ is very rare however. Therefore, while infrequent, like ‘seem’, ‘appear’ is often used in law review articles to achieve depersonalization, allowing the writer to distance himself from a claim and soften the claim in order to mitigate negative reaction from those readers who have evidence to the contrary. In addition, ‘appear’ has the function of showing deference to the reading public, helping to avoid assertions which are overly categorical and thus inviting other opinions. In Supreme Court opinions it is used to mitigate commitment to an interpretation of the other party’s intentions.
6.6 Conclusion

The first four sections of this chapter aimed to explain the similarities and differences in how the most frequent epistemic lexical verbs are used in the two sub-corpora. To that end, constructions the lexical verbs appear in were highlighted. For example, lexical verbs can be seen in impersonal constructions with abstract or unnamed rhetors indicating the use of the strategy of depersonalization. Depersonalization, which appears to be more common in law review articles than in Supreme Court opinions, signals a lack of confidence in the truth value of a proposition as well as a desire to deflect responsibility for the claim.

In addition, lexical verbs can be seen in personal constructions with first person pronouns ‘I’ and ‘we’ indicating subjectivization. This strategy is used to indicate a subjective opinion as opposed to fact which has the effect of downplaying the claim while indicating full responsibility for it. Subjectivization, especially with the pronoun ‘I’, is more common in Supreme Court opinions.

Environment and co-text surrounding the epistemic lexical verbs found in the corpus were also highlighted. For example, lexical verbs can be accompanied by other hedges such as modal verbs or epistemic adjectives and adverbs which indicate indetermination. This strategy signposts greater tentativeness and uncertainty concerning the claim being put forth, and appears more frequently in law review articles.
Preference for one strategy over another can be linked to a particular genre’s communicative purposes. An academic genre, such as the law review article, has the purpose of disseminating research and adding to the general body of knowledge on a particular topic. However, in academia categorical claims can lead to criticism, challenge, and ultimately loss of face. Categorical claims are not seen as dialogically expansive in that they do not invite other academics to express their often opposing opinions on a matter. They hinder the construction of knowledge by the discourse community in favor of one researcher’s findings. That would explain why such claims are avoided through the use of indetermination. It would also explain why researchers are often averse to taking full responsibility for their claims through depersonalization, effectively attributing claims to ‘the results’ or ‘evidence’, for example.

Supreme Court justices are little concerned with criticism and loss of face. As opposed to constructing knowledge, the justices are taxed with clarifying points of constitutional law and settling disputes. As members of the ultimate constitutional and appeals court, whose decisions are binding, they are not reticent about personally endorsing their claims and opinions knowing these can go relatively unchallenged. Indeed, reasoning and conviction are expected of a Supreme Court opinion, and often manifests itself through the use of subjectivization.
The lexical verbs found in the corpus were divided into four categories: speculative, deductive, quotative and sensorial. Several conclusions about the role and predominance of each category in the two genres can be made. Firstly, there is a preponderance of speculative verbs in law review articles but quotative verbs dominate slightly in Supreme Court opinions. The fact that there are over twice as many speculative verbs per 10,000 words in law review articles when compared to Supreme Court opinions could indicate a greater tendency to adopt ‘pragmatically cautious positions’ (Hyland, 1996a: 268) due to limitations in knowledge and existence of alternative explanations. Moreover, law review writers synthesize the opinions of other experts into a coherent theory which is presented as conjecture. Categorical affirmations of the truth value of claims would lead to disproval by the discourse community.

By contrast, different communicative purposes affect the use of quotative verbs in the corpus. Law review article writers employ quotative verbs to substantiate and support their own claims, but still rely on speculation to put those claims forward. The need to fulfill an operational purpose allows for less speculation on part of the writers of Supreme Court opinions. These decisions must reflect that many things are, in fact, known about the case hence the use of quotative verbs to link known facts with reasoned judgment.

Secondly, regarding the use of the two most significant speculative verbs in the corpus, ‘believe’ and ‘suggest’, both law review articles and Supreme Court
opinions tended to favor impersonal constructions often achieved by means of existential ‘it’ and ‘there’ as well as abstract and unnamed rhetors. This is associated with the strategy of depersonalization allowing the writer to avoid direct reference to himself with a view to distancing himself from the responsibility inherent in the propositions which are expressed. For Hyland, claims which help to protect the addresser from counter claims are ‘writer-oriented claims’ (1998c: 170).

When used with personal reference, ‘believe’ and ‘suggest’ were used quite differently in the two sub-corpora. Personal constructions, which are associated with the strategy of subjectivization. In law review articles, subjectivization helps to fulfil the function of emphasizing the subjectivity of a claim by presenting it as a reasonable opinion rather than a certain fact, which, in turn, often invites the reader to participate in their ratification. This often indicates respect for other viewpoints and conveys deference and modesty, serving as a politeness strategy. However, in the case of the Supreme Court justices, this is not always its function. Instead it highlights a personal opinion, often at odds with fellow justices. In particular, ‘suggest’ was used in the negative to clarify a stance.

Concerning the moderately significant speculative verbs found in the corpus, ‘depend’ and ‘tend’ are used particularly in law review articles to soften claims, especially when categorical assertions would not conform to the discourse
community’s expectations. ‘Think’ is significant in Supreme Court opinions where it is used as a writer-oriented hedge protecting the writer and softening his commitment and responsibility to claims being made.

Sensorial verbs are employed to the same end in both genres. One use is to aid in depersonalization and function as writer-oriented hedges to protect the writer from potential face-threatening acts. In addition by helping to present a claim as an opinion rather than fact, sensorial verbs can function as reader-oriented hedges inviting readers to participate in a dialogue opening up a discursive space for alternate viewpoints.

This concludes the discussion and analysis of the lexical verbs found in the two sub-corpora. The following chapter, Conclusions, will look backwards to reconsider the aims of this project in light of its findings, as well as look forward to how the information garnered in this study can be used to underpin pedagogical decisions in the EALP classroom.
CHAPTER 7:
CONCLUSIONS
The aim of this research project has been to compare hedging in two different legal written discourse genres: U.S. Supreme Court opinions and American law review articles. In particular, this study aimed to explain differences and similarities in how both modal and lexical verbs are used to realize hedging in the two genres as well as the functions such hedges serve.

The purpose of this chapter is two-fold: to summarize the key results of the study, and to draw conclusions about those results in the light of their pedagogical implications. Thus, section 7.1 summarizes the relationship between key lexical items, the hedging strategies which these lexical items signal, and the functions these strategies are employed to fulfil in both U.S. Supreme Court opinions and American law review articles. Section 7.2 addresses pedagogical implications of the results and makes several recommendations for future lines of research to inform pedagogical decisions in the EALP classroom.
7.1 Summary of key results

In order to achieve the main aim of explaining similarities and differences in the frequency, realization and use of hedging in U.S. Supreme Court opinions and American law review articles, it was first necessary to describe and analyze these two legal genres in detail. To that end, an in-depth study of the move structure for each genre was carried out and reported in 1.2.2 and 1.2.3. Such a detailed move structure, supported by examples taken from the corpus, had not been found in the existing literature to date, and so added a vital piece of information to the body of knowledge surrounding the two genres.

The move structure analysis of both Supreme Court opinions and law review articles identified that each genre were composed of four parts, each part comprising a series of moves and steps. The complete move structures for the two genres are presented in Figures 1.1 and 1.2. Briefly, however, Supreme Court opinions are composed of the following parts: Case identification, Rules / legal claims, Reasoning and Conclusion. By contrast, law review articles are composed of Introduction, Background, Analysis and Conclusion.

In addition to the move structure, a review of existing literature was carried out which helped to place the two genres in their situational context (as per Bhatia, 2004 – See 3.2.2). Different elements relevant to the genre were defined including the participants (writer and audience) as well as their relationship and
their goals. These elements were found to be particularly relevant to the role of hedging in the two genres.
Chapter 7: Conclusions

The results of this study have indicated that there is a 50% higher incidence of hedging in law review articles than in Supreme Court opinions (see Chapter 4). This result was postulated in the introduction to this study, and is not beyond what is expected when comparing an academic genre with a juridical one. However, generalities aside, it has been illuminating to compare lexicogrammatical items and strategies used to carry out hedging in the two genres as this has led to the conclusion that hedging is genre-specific, varying according to the discourse community’s expectations for a particular genre as well as the writer’s micro-level intentions within the genre.

Firstly, hedging appears to depend on the discourse community’s macro-level expectations for a particular genre. In effect, the same legal discourse community has very different macro-level expectations for the two different genres in this study. In particular, the discourse community expects Supreme Court opinions, which are operative documents, to be objective, authoritative, and to be both specific enough to resolve the case before the court, and general enough to be used as a basis by future courts when deciding a similar case. By contrast, the same discourse community expects law review articles to be subjective while at the same time responding to scientifically accepted views on the nature and uncertainty of knowledge.

Secondly, hedging would seem to depend on the addressee’s specific intentions within a particular genre. For example, U.S. Supreme Court justices
often use hedging as a means to indicate their particular stance towards an issue. Writers of law review articles, on the other hand, often use hedging to modulate their propositions so as to create an impression of humble subjectivity, and thus avoid a possible negative reaction in case the claims they make in their article do not actually prove true.

Thus, the two genres have very different macro-level expectations placed on them, and aim to achieve very different micro-level intentions. They have diverse communicative purposes as well. Consequently, different lexical items and different strategies are employed in the realization of hedging. The key findings for each genre are presented in the figure below, and then explained in the remaining part of this section.
### U.S. SUPREME COURT OPINIONS

<table>
<thead>
<tr>
<th>STRATEGY</th>
<th>LEXICAL ITEMS</th>
<th>FUNCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indetermination</td>
<td>Modal verbs ‘may’ and ‘could’ as well as epistemic adjectives / adverbs</td>
<td>To recognize fuzziness of law. (Rarely used)</td>
</tr>
<tr>
<td></td>
<td>Epistemic modal verb ‘would’</td>
<td>To strengthen a justice’s argument by weakening a claim to the contrary, presenting it as unlikely or impossible. To speculate on causation.</td>
</tr>
<tr>
<td></td>
<td>Abstract rhetors i.e. Congress, + speculative lexical verbs</td>
<td>To shift responsibility for a decision. To reinforce strength of rationale by citing rules of law applied.</td>
</tr>
<tr>
<td></td>
<td>Parties to the dispute + quotative verb</td>
<td>To indicate fairness through contemplation of all arguments.</td>
</tr>
<tr>
<td>Subjectivization</td>
<td>Personal reference + speculative verbs</td>
<td>With ‘we/our’, to create an impression of unity. With ‘I/my’ to reinforce a personal opinion and indicate stance especially in dissents.</td>
</tr>
</tbody>
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### LAW REVIEW ARTICLES

<table>
<thead>
<tr>
<th>STRATEGY</th>
<th>LEXICAL ITEMS</th>
<th>FUNCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indetermination</td>
<td>Epistemic modal verbs; Sensorial lexical verbs</td>
<td>To respond to the accepted view on knowledge; To make a claim less categorical, inviting others to participate in a discussion forum.</td>
</tr>
<tr>
<td>Depersonalization</td>
<td>Impersonal constructions; Abstract rhetors, i.e. ‘evidence’ + speculative verb</td>
<td>To prevent negative reaction in case of error by shifting responsibility for a claim to another entity.</td>
</tr>
<tr>
<td></td>
<td>Names of other scholars + quotative verbs</td>
<td>To reinforce academic rigor. To indicate that the present claim is in line with claims by others.</td>
</tr>
<tr>
<td>Camouflage Hedging</td>
<td>Emphatic, i.e. ‘in fact’ + speculative verb</td>
<td>To moderate uncertainty with respect to a claim.</td>
</tr>
</tbody>
</table>

Figure 7.1: Summary of Key Results
Articles written in law reviews, the most prestigious publications in the field of law, consider the impact of legal rules and court decisions on future court decisions, on public policy and on society in general. Law review articles are aimed at fulfilling educational, pedagogic and interpersonal purposes. On the educational and pedagogic level, their goal is to inform the discourse community and society at large about issues of import and to aid in teaching law students the skills of legal analysis and reasoning. On the interpersonal level, they provide an efficient means of communication and a forum for discussion for the members of the discourse community as well as stimulate research and legal analysis.

As a means by which to educate the public on a topic, law review writers synthesize the opinions of other experts into a coherent argument. They often employ quotative verbs such as ‘argue’ to substantiate and support their own claims and show that they have not only read and considered other pertinent opinions, but also their opinion is in line with that of other experts. This strengthens their claim while displacing the responsibility for it. The same end is met through the use of impersonal subjects such as ‘scholars’ or ‘evidence’. It is generally accepted that assertions made in academic writing should be supported by facts and statistics. By appealing to third parties, authors give the impression that their articles are well researched.
This discourse community, however, expects a certain degree of fuzziness and vagueness from written discourse genres set in an academic or pedagogic context. It is commonly held that knowledge is uncertain making categorical statements inappropriate in academic genres. An optimal way to recognize the epistemic nature of knowledge is through the use of the strategy of indetermination (see 2.2.2), especially by means of epistemic modal verbs such as ‘might’, ‘may’ or ‘could’ as well as speculative lexical verbs such as ‘tend’ and ‘depend’ which are much more widely seen in law review articles than in Supreme Court opinions. In particular, ‘might’ appears more than three times more frequently in law review articles than in Supreme Court opinions which could be due to ‘might’ expressing greater uncertainty, and more remote possibility. The Supreme Court seldom finds the need to express such extreme tentativeness given its binding power.

Moreover, as a consequence of satisfying the discourse community’s expectations concerning the nature and uncertainty of knowledge, hedging fulfils another function in law review articles: it serves to prevent conflict and negative reaction in the case that a claim made in the article proves erroneous. Therefore, authors of law review articles strive for a somewhat tentative, subjective tone which indicates a degree of humbleness with which they approach their propositions. Hyland affirms that “…metadiscourse [including hedges] seeks to establish an appropriate, discipline-defined balance between the researcher’s authority as expert-knower, and his/her humility as disciplinary
servant” (1998b: 440). In essence, this display of collegiality in which the addresser admits his fallibility ultimately aims to gain addressee, and by extension, discourse community acceptance (Silver, 2003).

Another way to prevent conflict or negative reaction is to distance one’s self from a claim. This is achieved through the use of depersonalization (see 2.2.2) which removes the responsibility for a claim from the writer signaling uncertainty as to the truth value of a proposition and lack of commitment to it. Depersonalization is realized through the use of speculative verbs including ‘suggest’ or ‘believe’, or the sensorial verbs ‘seem’ and ‘appear’, in impersonal constructions or with abstract rhetors such as ‘evidence’ or ‘results’, for example. Depersonalization deflects any potential face-threatening disagreement or criticism from the writer to the ‘evidence’ or ‘results’. By adding an emphatic such as ‘in fact’ to a claim, law review article writers can effectively use camouflage hedging (see 2.2.2) to increase the degree of certainty as to the truth value of the claim while still shifting responsibility for it to a third party.

In law reviews, both depersonalization and camouflage hedging mitigate the writer’s claim so that it is not overly assertive, thereby opening a discursive space in which other viewpoints are recognized conveying both deference and modesty. Paradoxically, this aids the writer in having his views accepted by the discourse community, elevating his status within it. As Hyland notes,
academics gain acceptance for their research claims by balancing conviction with caution, either investing statements with the confidence of reliable knowledge, or with tentativeness to reflect uncertainty or appropriate social interactions (1998a: 349).

The same ends can also be achieved through subjectivization (see 2.2.2) signaled through the use of the speculative verbs ‘believe’ and ‘suggest’ in conjunction with personal reference. While less frequent in law review articles, this strategy is sometimes used to highlight that what is being presented is a reasoned opinion rather than fact. The subjectivity of a claim in turn, often invites the reader to participate in their ratification. This again indicates respect for other viewpoints and conveys deference and modesty, serving as a politeness strategy.

Supreme Court opinions, by contrast, aim to fulfil not only interpersonal and educational but also operative purposes. On the interpersonal level they guide courts and lawyers in dealing with similar cases and influence public policy. On the educational level, like law review articles, they can be used to help to teach law students the skills of analysis and reasoning. More importantly, they serve to educate the nation about what is constitutionally permissible. Nevertheless, Supreme Court opinions are, above all, operative documents. They settle judicial disputes as well as serve as authentic public records of decisions which must be followed by courts in subsequent cases. As they are laid down by the
highest court in the land, they are not open to dispute in the same way as, for example, an argument put forward in a journal article.

Keeping this in mind, perhaps what is surprising is that there is any hedging at all in Supreme Court opinions. However, as Chief Justice Renquist (1987: 291) asserted, “the law is at best an inexact science and the cases the [Supreme] Court takes to decide are frequently ones upon which able judges in lower courts have disagreed. There simply is no demonstrably ‘right’ answer to the question involved in many of our difficult cases.” In legal theory, cases which are clear and judicially certain pertain to the ‘core’, and other less standard cases belong to the ‘penumbra’ (Endicott, 2000).\(^2\) The boundaries which separate the ‘core’ from the ‘penumbra’, however, are often fuzzy or vague, the consequence of which is articulated in Endicott’s (2000) ‘indeterminancy claim’. That is, vagueness is an inherent trait of law which is often reflected in the vague language of legal documents. For example, while less frequent than in law review articles, indetermination through the use of epistemic modals can be found in Supreme Court opinions.

The problem for law is that vague language can lead to indeterminancy of a person’s rights and duties and, subsequently, indeterminancy in the application of the law. The legal discourse community, therefore, while acknowledging that

\(^2\) This oft-quoted metaphor, which harks back to Rosch’s concept of ‘core meaning’, is credited to the famous legal theorist H.L.A. Hart.
law is often vague, generally adheres to the ‘standard view of adjudication’ by which it is the judge’s task to define and enforce a person’s duty or right (Endicott, 2000). Thus, documents set in a purely juridical context which serve important operative purposes, such as Supreme Court opinions, are entrusted with removing vagueness and fuzziness from law. One way to remove vagueness from the application of the law, while still acknowledging the fuzziness of law itself is to present arguments as personal opinions, hence the use of subjectivization through personal reference items such as ‘I’ or ‘my’ in Supreme Court opinions. Use of ‘we’ and ‘our’ reinforce subjective claims by presenting a face-saving united front behind a particular decision.

Nevertheless, whereas the Court is often concerned with saving its own face as an institution, particularly regarding future application of its decisions, it does not appear overly concerned with saving the face of either of the parties involved in the case, or of individual justices on the bench. In fact, both agreement and disagreement are expressed quite directly and are very seldom hedged. This would corroborate Kurzon’s assertion that “…while politeness is frequently found in the opinions of English appeal judges, the same is not true for American judges” (2001: 65).

In particular, subjectivization through the use of personal reference in conjunction with the speculative verb ‘think’ is often seen in dissents. As opposed to law review article writers, Supreme Court justices do not seek to
gain acceptance into their community, but rather at times to stand out from it. They may choose to highlight the fact that, while law is an inexact science, their answer to a particular case is ‘more right’, and better reasoned, than their peers who represent the majority.

Being less concerned with saving face in general, Supreme Court justices openly engage in counter argumentation, a hallmark of the adversarial system. While the epistemic modal ‘would’ is the most significant modal verb found in both sub-corpora, it is notably more frequent in Supreme Court opinions than in law review articles where it serves to strengthen a justice’s argument by weakening a claim to the contrary, presenting it as unlikely or impossible.

In addition, counterfactual conditionals are strongly related with causation, the relationship between a cause and effect, and defining this relationship is important in settling a legal dispute. The need to fulfill an operational purpose allows for less speculation on part of the writers of Supreme Court opinions. These decisions must reflect that many things are, in fact, known about the case hence the use of quotative verbs to link known facts with reasoned judgment.

Moreover, though depersonalization is apparent in Supreme Court opinions, often shifting responsibility for a proposition onto the makers of the law, ‘Congress’, or ‘the provision’, it is used less as an attempt to save face in case
of disagreement with the wider discourse community, and more as a way to lend weight to the justices’ arguments and rationale by citing the rule of law governing their decisions. Similarly, in order to prevent possible negative reaction for a decision taken, justices often appeal to the purpose of a statute, or the intent of legislators, or the intent of the original Framers of the Constitution when ruling in a case. They effectively shift responsibility for their decision to a third party through the use of such expressions as ‘in Congress’ view’. This responds to the fact that the right to decide a case is vested in them on behalf of the people, and they are not to be seen as imposing their own desires and wills.

The same could be applied to the justices’ use of quotative verbs such as ‘argue’ as these are often used in conjunction with the parties to the dispute. By considering arguments presented by both parties, the Supreme Court gives an impression of fairness. Moreover, the rhetorical technique of mitigating the illocutionary force of a counter-argument to boost one’s own argument can add to the notion that the Court has reflected long and hard on the different points of view before coming to a well-contemplated conclusion as to the ‘best’ answer to the conflict, which is, in reality, the discourse community’s macro-level expectation concerning the goal of the Court.

As operative documents, Supreme Court opinions are expected to offer a solution to a judicial dispute, as well as provide a rationale for it which could
inform future courts. The justices’ rationales, nevertheless, are often punctuated by indications of stance and value judgment through the use of subjectivization, particularly personal constructions involving the speculative verb ‘suggest’ in the negative.

It is important at this point to recall that while U.S. Supreme Court opinions are primarily operative documents, they are also expository and persuasive pieces of writing. However, hedging is used less in the actual holding, or binding decision, of the court than in the *dicta*, or “pronouncements which may be persuasive, but are not binding” (Jones et al., 1980: 113). Since *dicta* can be cited by lawyers in similar cases to support their own line of reasoning, hedging here not only functions to soften the illocutionary force of a counter-argument in order to reinforce the justices’ own argument, but also to prevent conflict in the future application of the decision.
7.2 Pedagogical implications

One of the main aims of the ESP school is to find ways to improve teaching through the design of targeted, evidence-based learning activities. Following in that tradition, a key aim of the present study was to analyze the role of hedging in the two selected genres in order to find pedagogically exploitable material to help EALP students in developing hedging competence, an integral part of general linguistic competence allowing us to assume our place in a discourse community.

It has been noted that hedging is an interactional phenomenon, meaning both its production, as well as its interpretation, depend on both interlocutors shared linguistic as well as pragmatic background knowledge, and on the degree of their understanding of the particular genre’s context and communicative purposes. In the case of legal discourse, both the addresser and the addressee are generally products of law schools in which they have been steeped in the tradition of persuasive legal argumentation, and are thus familiar with the conventional discursive practices of their disciplinary community. However, a non-native post-graduate EALP student is usually a product of a very different legal discourse community. Therefore, EALP students often lack not only the necessary linguistic, but also pragmatic, contextual and functional knowledge and understanding of the genres they will need to handle.
This could result in EALP students being unable to interpret and produce the selected genres correctly (Abbhul, 2006; Fraser, 2010; Poos and Simpson, 2002). They may have an erroneous, usually negative view of hedging in general due to cultural beliefs and prejudices which may lead to misinterpretations of legal scholars’ and justices’ intent, as well as hinder attenuation of their own writing, making them, and the arguments they put forward, vulnerable to criticism and rejection (Tessuto, 2011, Alonso et al. 2012).

Therefore, the data gathered in the present study has been aimed at serving two pedagogical purposes. Firstly, it should increase understanding of the real use and role of hedging in the two legal genres. Discussion and practice of hedging in popular textbooks aimed at preparing students for post graduate study is often reduced to a chapter on lexico-grammatical realizations of ‘cautious language’ as in Bailey’s Academic Writing: A Handbook for International Students (2006: 133). While Bailey does, at least, go beyond the use of modal verbs to mention adverbs and verbs which can also add tentativeness to a statement, his only advice for students is “A cautious style is necessary in many areas of academic writing”, and “Caution is needed to avoid making statements which are too simplistic” (2006: 133). There is no attempt at discussing other hedging functions or strategies, and the reduced number of hedges mentioned are not prioritized according to frequency of occurrence.
This may be understandable in a textbook such as Bailey’s (2006) which is aimed at English for General Academic Purposes students, and thus covers a wide variety of disciplines, but even the few EALP textbooks on the market do the same. For example, Reid’s (2011) *Legal Writing in the U.S. for Students and Practitioners of Law* is based specifically on “the writing needs of pre-LLM or pre-JD students” and one goal is “to prepare students to edit their own writing” (2011: 17). The book is aimed at helping students to write, among other genres, “a research paper / journal article / thesis” (2006: 19). Yet, while containing useful advice on a variety of topics, there is no mention of the role of hedging in writing, or of any of the lexico-grammatical items which could be used to carry hedging out.

In addition to adding to the body of research on real use of hedging in disciplinary writing, a second pedagogical purpose of this research is to inform creation of targeted pedagogical interventions which can be used in the EALP classroom. This is especially important for teachers of EALP which may not be familiar with, or have first-hand experience with, disciplinary practices in the field of Law (Spack, 1988). The data gathered in this study will enable them to design and implement suitable materials as part of a visible pedagogy which will help their students notice and subsequently interpret and produce hedging in their own, and published samples of writing.
Due to the nature of the present research project, certain limitations had to be observed. Looking forward, and following the suggestions of Markkanen and Schröder (1997), much could be gained by broadening the approach to better examine both the process behind text production and the interaction resulting from text reception. The former could lead to, among other things, studies of, in the case of Supreme Court opinions, judge – law clerk relationships, or the bargaining process justices engage in to reach a majority decision. In the case of law review articles, the writing process, including the submission – acceptance process could be analyzed. The latter could lead to, for example, analysis of the processing and interpretation of hedging in the two genres by different addressees. Nevertheless, it is believed that this research provides a springboard from which further studies can enhance understanding of the important concept of hedging in legal discourse.
Works from Corpus cited in the Examples

WORKS FROM CORPUS CITED IN THE EXAMPLES

United States Supreme Court Opinions (note: 2013 opinions have not been assigned a page number yet)


Davis v. Monroe City Board of Education 526 U.S. 629 (1999)

Descamps v. United States 570 U.S. ___ (2013)
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Shelby County v. Holder 570 U.S. ___ (2013)
Tarrant Regional Water District v. Herrmann 569 U.S. ___ (2013)
University of Texas Southwestern Medical Center v. Nasser 570 U.S. ___ (2013)
Vance v. Ball State University 570 U.S. ___ (2013)
American Law Review Articles


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