Applying Genera Based Approach in Testing Case Law Comprehension

Naveed Ahmad
Associate Professor, Department of English, Bahauddin Zakariya University, Multan

Ghulam Hafsa
Research Scholar, Allama Iqbal Open University, Islamabad

Abstract
This study analyzed the testing case law comprehension by applying Genera Based Approach. Case law reading comprehension of Pakistani law students have been investigated by Ahmad (2009) by recording the stakeholders’ perceptions using questionnaire as a tool. Through a different tool, i.e. test, the same problem is investigated in this research to check whether the findings correlate with the previous research. Taking insights from the review of literature and having consultations with the subject specialists, a test was designed. Data was analyzed quantitatively. The results revealed that the present research’s findings match with the results of the previous research carried out through a different tool. This confirms that the problem investigated from different angles reveals the same result: poor case law reading comprehension. This reassures that there is a strong justification to implement a legal English course in institutions of legal education in Pakistan.

Keywords: Testing and Evaluation in ESP, English for Academic Legal Purposes (EALP), English for Occupational Legal Purposes (EOLP), and Genre Based Testing, Language and Law

I. Introduction
Since the last few decades, genre based approach in English for Specific Purposes (ESP) remained popular all over the world. In Pakistan, this approach gained momentum in English for Business Studies. However, majority disciplines’ pedagogical agendas hardly reflect any attention to toward this approach. Law is a discipline that requires this approach seriously as legal genres are complex in nature, and the users need to perform tasks concerning the generic features of legal texts. Focusing on case law genre, Ahmad (2009) confirms that Pakistani law students do not have adequate ability regarding the tasks they are required to perform while reading the judgments produced by Judges of the superior courts i.e., case law. In this study, questionnaire has been the research tool and data was collected from law students, law teachers and lawyers. However, students were not given test to check their existing competence level in comprehending case law.

Keeping in view the high seriousness of the problem, we decided to further go into the depth by investigating the problem by giving the students a test as well.
In this research, the specific objective was to find out the extent of reading comprehension of case law with reference to the sub-skills related to reading of cases so that a case law reading comprehension course could be recommended in the light of the findings of this research project.

II. Literature Review

Genre based approach got popularity after the publication of Swales (1990). A genre comprises a class of communicative events, the members of which share some set of communicative purpose. These purposes are recognized by the expert members and thereby constitute the rationale for the genre. The rationale shapes the schematic structure of the discourse and influences and constrains choice of content and style … In addition to purpose, exemplars of a genre exhibits various patterns of similarity in terms of structure, style, content and intended audience. (Swales, 1990:58)

The major advantage of genre analysis is its ability to relate textual findings to features of the “discourse community” within which the genre is produced. After Swales, Bhatia (1993) also defined genre by taking insights from Swales. Bhatia’s definition of genre is very much similar to that of Swales’ definition. Similarly, Flowerdew and Peacock (2001) mention that genre is a particular type of communicative event which has a particular communicative purpose. Also, they point out that linguistic analysis of genre is useful for academic and occupational purposes. To analyze genre, Bhatia (1993) gives a seven steps process of genre analysis which is helpful in carrying out genre analysis.

Legal genres have been investigated by a number of linguists. These investigations have been with reference to various sub-genres: legislative texts, legal textbooks, law review journal and case law. Case law researches have been carried out by Bhatia (1993), Maley (1985), Badger (2003), and Bowles (1995). These researches reveal similar findings to great extent; however, there are some differences as well which pertain to some details. These investigations show structural organizations with reference to case law. It is evident that there is a pattern which is followed by the producers of the text. If this pattern is introduced to law students at the start of their legal education programs, comprehension will increase significantly. Therefore, these researches have pedagogical implications.

Howe (1990) studies the problem question, a writing task for law students, in which students simulate the thinking of a lawyer advising a client. Through this research, 20 scripts, 10 written by students and 10 by teachers, were examined and a schema of 8 “units of discourse” was found. The pattern was one of repeated syllogisms, or an algorithm, contained within a macrostructure of situation — problem — solution. Variations of the pattern depended on whether the issues discussed were discrete or dependent and, also on the type of law being studied. This is a genre where the discourse is “tightly controlled by the traditional methods of professional argument”.

Some recent works in genre analysis with reference to legal texts are also significant. In this context, Tessuto (2011) researched legal genres by carrying out comparative genre analysis of two genres in the discipline of law. The study attempts to analyze legal opinions’ patterns of discourse in academic and professional settings that
differ geographically and culturally. One setting was Legal Problems Question Answers in the academic writing context of the United Kingdom, whereas the other context was Pareri (Ps) in the professional legal setting in Italy. This qualitative and quantitative research was based on the tenets of genre analysis. The data comprised a collection of Model Answer texts to Problem Questions used in two legal cultures. The findings indicate that Legal Problem Answers and Pareri have similarities as well as differences. The similarities are in the relevant rhetorical organizational patterns, whereas the differences are in the use of lexico-grammatical resources. It is argued that the writer’s disciplinary (legal) culture and language determine legal discourse practices.

In another study by Tessuto (2015) research articles in the discipline of law have been investigated as structure of empirical law research articles largely escaped attention of scholars in the field of genre analysis. Macro structure have been analyzed and generalized across sections. The study has pedagogical significance.

Karl (2012) investigates the ways through which genre chains are constructed through engagement in specific tasks. The research attempts to explore two international students’ development of genre systems in law and MBA programs through the examination of program syllabi and individual student engagement. The findings of the research indicate key differences between the programs in expectations and genre sets. Also, it reveals the ways that individuals construct genre systems “to mitigate the language challenges that they face. The findings add a thick description to the specific vs. general EAP discussion”.

Another genre study by Bruce (2002) describes an approach to teaching law students how to write the academic genre of the legal problem answer. This approach offers students rhetorical tools to translate legal reasoning moves into an effective written response to legal problems.

Hafner (2015) compared intertextual references in novice and expert professional legal writing. In this context, a multi-perspective approach to genre analysis has been used. The Intersexual references include appeals to authority on both law as well as fact. The findings reveal that differences in the texts suggest that novices take an overly ‘academic’ approach. Further, it has been noted that for novices, learning professional writing means aligning with the assumptions of the professional disciplinary culture.

Cheng & Cheng (2014) investigates the method in which epistemic modality is employed in civil judgments. It has been researched how different types of epistemic modality are used in different jurisdictions of Hong Kong and Scotland through a comparative analysis. The study integrates subjective appraisal and objective assessment perspectives in understanding the principal of proof. Further, the research proposes an integrated framework of principle of proof and discusses a continuum of probability in law.

Other researches in case law have been carried out by Burnham (2002) and Stratman (2004). Stratman takes into account deductive and analogical reasoning, whereas Burnham’s research relates to cognitive aspects in case law writings. Ahmad (2009) looks at case law from another angle i.e., an analysis of case law reading comprehension with reference to different sub skills required in this genre. Through a
different tool, i.e. test, the same problem is investigated in this research to check whether the findings correlate with the previous research.

III. Method
For Ahmad (2009), case law comprehension requires:

1. Find the rule
2. Distinguishing material cases from immaterial
3. Reaching the judgment
4. Understanding reasoning
5. Understanding procedural history
6. Understanding citation
7. Understanding subject specific vocabulary

Therefore, the following research questions were generated:

1. While reading case law, what is the extent of reading comprehension with reference to finding the rule (ratio decidendi)?
2. While reading case law, what is the extent of reading comprehension with reference to distinguishing material facts from immaterial?
3. While reading case law, what is the extent of reading comprehension with reference to reaching the judgment correctly?
4. While reading case law, what is the extent of reading comprehension with reference to understanding reasoning?
5. While reading case law, what is the extent of reading comprehension with reference to understanding procedural history?
6. While reading case law, what is the extent of reading comprehension with reference to understanding citation?
7. While reading case law, what is the extent of reading comprehension with reference to understanding subject specific vocabulary?

To find out answers to these questions, a test was designed. The test comprised of an authentic text of a case law followed by questions that were designed in the light of research questions. The test was administered in the city of Sargodha in different law colleges. Law students were the subjects, and the total sample size was 100. Test scores for each question were converted into four categories:

1. Excellent: 80% & above comprehension level
2. Good: 60% to 79% comprehension level
3. Fair: 50% to 59% comprehension level
4. Poor: below 50% comprehension level

Data was analyzed quantitatively.
IV. Data Analysis

Below, the findings have been presented in detail.

A. Finding the rule (ratio decidendi) in a case

In this case, the research question was:

While reading case law, what is the extent of reading comprehension with reference to finding the rule (ratio decidendi)?

The subjects answered this question while taking the test based upon a case law. Out of 100 students 85% (n=85) revealed that their performance was poor. On the other hand, those students who revealed that their comprehension was excellent, good or fair were 6% (n=6), 4% (n=4) and 5% (n=5) respectively. This shows that a vast majority has poor reading comprehension of cases with reference to finding the rule (ratio decidendi) in a case. See the following Table 1 along with Graph 1.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Excellent</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6%</td>
<td>4%</td>
<td>5%</td>
<td>85%</td>
</tr>
</tbody>
</table>

Graph 1

B. Distinguishing material facts from immaterial

Here the research question was:

While reading case law, what is the extent of reading comprehension with reference to distinguishing material facts from immaterial?

Out of the total of 100 scripts, the results revealed that 68% (n=68) students were poor in reading comprehension of cases with reference to distinguishing material facts from immaterial, while the ones who revealed excellent, good and fair comprehension
4% (n=4), 13% (n=13), and 15% (n=15) respectively. Once again majority was poor in comprehension. See Table 2 and Graph 2.

Table 2

<table>
<thead>
<tr>
<th></th>
<th>Excellent</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>4</td>
<td>13</td>
<td>15</td>
<td>68</td>
</tr>
</tbody>
</table>

Graph 2

C. Reaching the judgment correctly

In this case, the research question was:

*While reading case law, what is the extent of reading comprehension with reference to reaching the judgment correctly?*

While answering, the students revealed that 70% (n=70) of them were poor, 15% (n=15) were fair, 10% (n=10) were good, and 5% (n=5) were excellent. Once again a vast majority was incompetent in this skill. See Table 3, and Graph 3.

Table 3

<table>
<thead>
<tr>
<th></th>
<th>Excellent</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>5</td>
<td>10</td>
<td>15</td>
<td>70</td>
</tr>
</tbody>
</table>
With this regard, the research question was:

**While reading case law, what is the extent of reading comprehension with reference to understanding reasoning?**

The data showed that 60% (n=60) students were poor in comprehending the case in the context of understanding reasoning. On the other hand, 13% (n=13) were fair, 16% (n=16) were good, and 11% (n=11) were excellent with reference to this skill. See Table 4 and Graph 4.

<table>
<thead>
<tr>
<th></th>
<th>Excellent</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>11%</td>
<td>16%</td>
<td>13%</td>
<td>60%</td>
</tr>
</tbody>
</table>

**Graph 4**

1. understanding reasoning

<table>
<thead>
<tr>
<th></th>
<th>Excellent</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>11 %</td>
<td>16%</td>
<td>13%</td>
<td>60%</td>
</tr>
</tbody>
</table>
4.4 Understanding procedural history
Here, the research question was:
While reading case law, what is the extent of reading comprehension with reference to understanding procedural history?
While answering, the scripts, the students revealed that 55% (n=55) of them were poor, 17% (n=17) were fair, 13% (n=13) were good, and 15% (n=15) were excellent. See Table 5 and Graph 5.

<table>
<thead>
<tr>
<th>Table 5</th>
<th>Excellent</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>15%</td>
<td>13%</td>
<td>17%</td>
<td>55%</td>
<td></td>
</tr>
</tbody>
</table>

Graph 5

4.5 Understanding citation
Here, the research question was:
While reading case law, what is the extent of reading comprehension with reference to understanding citation?
The data contained the information that 20% (n=20) were poor, while 40% (n=40) were fair, 26% (n=26) good and 14% (n=14) excellent respectively. Contrary to the information received in the sub-skills mentioned above, it is the only one where competence level of the majority was not poor. See Table 6 and Graph 6.

<table>
<thead>
<tr>
<th>Table 6</th>
<th>Excellent</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>14%</td>
<td>26%</td>
<td>40%</td>
<td>20%</td>
<td></td>
</tr>
</tbody>
</table>

Graph 6
E. Understanding subject specific vocabulary

As far as this sub-skill was concerned, the research question was:

While reading case law, what is the extent of reading comprehension with reference to understanding subject specific vocabulary?

While answering, the students revealed that 50% of them were poor in this area, while 17% were fair, 21% were good and 12% were excellent. See Table 7 Graph 7.

Table 7

<table>
<thead>
<tr>
<th></th>
<th>Excellent</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12%</td>
<td>21%</td>
<td>17%</td>
<td>50%</td>
</tr>
</tbody>
</table>

Graph 7

V. Conclusion

In this research reading comprehension of cases were taken under consideration. A test was constructed taking insights from literature in the fields of ESP, Legal English, testing and evaluation, and communicative testing.

The test was administered in various institutions of legal education in the city of Sargodha. From various colleges, 100 students of LLB Part-III were taken under consideration for this purpose. Test results are surprising: A vast majority of students have poor competence in reading comprehension of cases with reference to the sub-skills required in comprehending this genre.

Out of the seven skills taken under consideration, in six, students’ comprehension was poor. The findings are surprising in a sense that otherwise all these students have passed a variety of courses by the time they have reached here at the final stage i.e. near the end of their LLB Part III exam. This reveals that the teaching and testing system in legal education is defective and requires drastic changes. The findings of earlier research
carried out in this area by Ahmad (2009) and Ahmad (2006) with different tools also reveal almost similar findings, which authenticate the findings of this research.

To address the problem, a legal English course is recommended having a component of reading of cases that should provide the law students exposure to authentic texts of cases in the form of rigorous reading tasks followed by practice exercises in all the above mentioned strategies required in effective comprehension of cases. Ahmad (2006) provides the details of such a course.

References


