

DISTINCTIVE TRAITS OF THE LEGAL DISCOURSE

Silviu Nicolae Pîriială

PhD Student, "Ștefan cel Mare" University of Suceava

Abstract: Law and language are not just inter-disciplinarily related; language has a fundamental role in the very existence of law practice and theory. Words become powerful tools in an effort to shape moral standards and to promote social justice. But the language used by legal professions may not be easily understandable for all people because legal systems develop certain linguistic features that differ from those of ordinary language. Although the grammar and most of the vocabulary are identical, legal language has a substantial amount of technical terms due to its special purposes; the text of the law needs to be clear, explicit, and precise in order to provide a firm foundation for legal decision-making processes, which have to be systematic and just. Such strict conditions lead to rigid requirements on the design of the language of legal texts. This article explores the distinctive traits of the legal discourse in close connection to the factors that contributed throughout history to the present-day character of legal language.

Keywords: legal discourse, technical, formality, conservative, complexity.

In all societies, law is written, interpreted and enforced in order to establish moral standards, maintain order and protect liberties and rights. Most of these legal processes are primarily accomplished through language. Legal texts, whether written or spoken regulate social behavior. The complex structure, formality and technicality of the legal language have their roots in the evolution of the English society throughout centuries. The development of legal language in the common law system is closely related to the history of Great Britain. After the Norman invasion, although English was spoken by most of the inhabitants, all writings were done in Latin and French. In fact, for nearly three hundred years, Anglo-Norman French became the official language for all legal proceedings, while Latin was the language of formal records and statutes. Their influence can be seen in a number of words and phrases that still exist today in legal writing. It was not until the 17th century that English became the official language of the law. But by then, much of the vocabulary used in written and spoken legal language was derived from French and Latin, making it very difficult to be understood by non-specialized people. From the 18th century, a process of simplification and clarification of the legal language started, but there is still a huge difference between the daily discourse and the one governing the field of codes, statutes and courtrooms. The way in which legal documents were created centuries ago are still applied today just to preserve tradition and habit and for the need of precision.

Legal language has been defined as a “functional variant of natural language”¹, being used in particular social roles and having specific linguistic forms. It is regarded as a language within language because it is not held in common by all people, but only by those who belong to a specific community. Linguistic theories investigating legal language are forensic linguistics and legal discourse analysis. While the former seeks to apply linguistic knowledge and methods to the context of law, language, judicial procedures, the latter focuses on the investigation of legal texts: written codes, records of the judicial proceedings,

¹ Heikki, Mattila E.S., *Comparative Legal Linguistics*, Ashgate Publishing House, 2006, p.3

legal documents, court pleadings, laws. Hence, the four main categories of legal discourses: judicial discourse, reflecting the language used in judicial decisions, either spoken or written; courtroom discourse; the language of legal documents; the discourse of legal consultation. Furthermore, legal language is not considered to be a single genre. The variety of legal discourses reflects the number of sub-genres. Courtroom language, for example, differs from the language of legal authors or legislators. The language of the lawyer used in the courtroom is not the same with that used with his client, the language of agreement is not identical with the one present in agreements.² The different discourse situations are related to the use of legal language, but their division cannot be done so neatly. Nevertheless, they point out the complexity of the concept.

In linguistics, a language can be analyzed on five major levels: phonetics and phonology, morphology, syntax, semantics and pragmatics. The first two levels examine the smallest parts of the language and the way they are used in order to make meaning. Syntax analyzes the way words are combined together in order to form sentences, while semantics seeks to highlight the way in which sentences make meaning internally. Pragmatics searches for the meanings that aren't present, but are somehow indicated by syntactic arrangements. Focusing on the way sociolinguistic value gets inscribed in the language as it is being used, discourse analysis is related to and encompasses all of these levels as pronunciation, spelling, meaning and grammar depend on the context of the situation. A legal text can be regarded as a special purpose text belonging to legal discourse, considering its distinctive functional, structural and linguistic features. Legal language, as a complex type of legal discourse, is often difficult to understand due to its special syntactic, semantic and pragmatic rules.

At the lexical level, one of the most obvious features is the abundance of Latin terms and expressions which are especially used in legal argumentation. There are a series of reasons that justify their still present influence on the language of the law. From a historical perspective, the Roman Empire and the Roman Church had a great impact upon Western civilization; the whole high culture in general, law in particular, was conveyed through Latin. The Roman law was a coherent written system that governed considerable areas of Europe for such a long time that it had the connotation of an institution. Furthermore, the survival of the language over centuries confers it a special status in relationship to other languages. Latin becomes associated with knowledge, permanent validity and has a unique socio-cultural prestige. Legal statements in Latin make behaviour more imposing and the citizens more obedient. The apparent timeless nature of principles would not be the same as if they were written in present day language. Latinisms are also used in order to avoid ambiguity; they do not only mean, but they also suggest meaning. For example, the principle in *dubio pro reo* (when in doubt, one must rule in favour of the accused) does not only mean that a defendant may not be convicted by the court when doubts about his or her guilt remain, but it also evokes a long tradition of legal analysis and rulings. Apart from numerous Latin expressions (*actus reus*- guilty act; *ex parte*- on behalf of; *ratio legis*- the reason for; *de jure*- legally; *restitutio in integrum*- restoration to the original position etc.) present in legal texts, there are also many terms derived from Latin: *negligence*, *adjacent*, *frustrating*, *inferior*, *quit*, *subscribe*, etc. But Latin isn't the only language that has a great impact on legal English. A considerable amount of terms in legal texts are of French and Norman origin: *appeal*, *attorney*, *claim*, *complaint*, *counsel*, *court*, *defendant*, *evidence*, *judge*, *jury*, *justice*, *party*, *plaintiff*, *plea*, *sentence*, *verdict* etc. These influences are also reflected in "ee" suffix

²*Ibid.*

derivation (*condemnee, detainee*) and in adjectives standing behind the noun (court martial, solicitor general).

Legal English is complex, unique, conservative. It is slow to change and has the tendency to retain words, phrases and formulas that are difficult to understand for the laypeople. The use of archaisms may be regarded as a natural process if the pursue for great formality of the legal language is taken into consideration. The more conservative legal terms are, the more secure the legal document will be. The use of antiquated terminology is driven by the need to avoid dangerous changes concerning legal lexical meaning because certain archaic words have actually acquired an authoritative interpretation over the years. Therefore, legal texts have numerous terms in so called fossilized language which is reflected by the use of archaic compound adverbs and prepositional phrases such as *hereinafter, thereby, thereunto, forthwith, hereof* etc. These native expressions are regarded as rare in everyday English, but, in legal language, they make it more specifically to those who are mainly concerned with matters of this field of activity. For example, the archaic terms used by lawyers are known as legalisms and lawyerisms: *pursuant to* (in accordance with), *prior to* (before), *subsequent to* (after).

Another prominent feature of legal English is the abundance of synonyms and their use within idioms in which one word would be enough to highlight their meaning. The doublets and triplets, also called binomial expressions³, are defined as sequences of two words belonging to the same class, which are syntactically coordinated and semantically related. These pairs become frozen expressions which are irreversible; they are formal syntactic features rather than lexical ones.⁴ Reduplication is usually comprised of two or three near synonyms (nouns, adjectives, adverbs or prepositions) which are joined by a conjunction, usually *and*. The parallel use of two terms with the same conceptual meaning reflects not only the intention of the legislator to emphasize upon the importance of that legal concept, but also its uncertainty as to whether they have the same meaning or not. It resulted in a large number of doublings: *act and deed, custom and usage, leave and license, false and untrue, null and void, request and require, have and hold, full and complete, legal and valid, object and purpose, last will and testament* etc. Legal English also uses frequent repetition of particular words, expressions and structures in order to avoid ambiguity: *Before serving her/his term as Chair for one year, the Chair shall first serve one year as Vice-Chair. She/he shall also serve as Vice-Chair for the year following her/his term as Chair. Every year the Management Committee shall appoint the Chair for the year subsequent to the following year according to the selection procedure described in this Article.*⁵ Legal language is highly concerned with the exactness of reference, therefore its tendency toward lexical repetition. Besides the repetition of certain lexical items, one can notice the frequent use of multiword prepositional structures such as: *in respect of, in accordance with, pursuant to* etc.

Another distinctive feature of legal English is its technical terminology. Legal vocabulary is primarily symbolic lexicon which places great stress upon the legal signifier or legal word as an entity in itself. It is a vocabulary of possibilities purportedly comprising a comprehensive system of meanings that are internal or latent within the lexicon itself.⁶ Lexis in legal discourse can be generally divided into: technical terms (*barrister, solicitor, court,*

³ Danet, B., *Legal Discourse in Handbook of Discourse Analysis, Vol.1, Disciplines of Discourse*, ed. T.A. van Dijk, London: Academic Press, 1985, p. 283

⁴ *Ibid.*

⁵ Rules of Procedure of the Management Committee of the BEREC Office, art.2

⁶ Goodrich, Peter, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis*, Macmillan Press, 1987, p.177

committal, bailment, abatement, deforcement, bring an action); semi-technical or common terms with uncommon meanings⁷ (*assessment, enclose, compensation*); every day vocabulary (*report, record, access, repair, examine*). Purely technical terms include words or formulas which are used exclusively in legal context and are rarely applied outside it. Genuine technical terms are more accurate and more efficient when referring to legal concepts. Semi-technical words and phrases belong to everyday lexicon which obtained extra-meanings in the legal context. They have one meaning or more than one in everyday language and another in the field of law. Without looking at the context in which they occur, it is difficult to understand their precise meaning. The last group and the most numerous includes terms in general use which are found in legal texts. It must be pointed out that these words have neither lost their everyday meanings nor acquired others by their use in legal contexts. The message of the law must be transmitted in a language that is extraordinarily definite and precise. Legal language pays attention to detail and makes careful distinctions between words that seem almost the same in meaning to the laypeople. The difference between residence and domicile, privilege and right, may have no consequences in everyday language and life, but in a legal context these distinctions are critical.

Syntactic features are probably more distinctive of legal English than are lexical ones, and certainly account for more of the difficulties of laypeople in understanding it.⁸ The most striking feature of legal English is the complex structure and the considerable length of the sentence. One sentence may spread through an entire paragraph and contain many independent and dependant clauses. The longer the sentences, the more complex they become, the bigger the number of subordinating clauses and phrases. The postponement of the main verb until very late in the sentence, the use of conditionals and hypothetical formulations further complicate legal texts and make it very difficult for the lay man to understand it. The conditions may be complex and include double or triple hypothesis and mix positive and negative possibilities. These characteristics are mainly the result of the complexity of the subject matters and the prospective nature of legislative law.⁹ Long sentences also result from adopting the principle of all-inclusiveness, which is often essential in a legal document if every possible circumstance and eventuality is to be taken into consideration. Syntactic discontinuities are frequent in legal discourse, interrupting the natural flow of the sentence by inserting added information: *In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation.*¹⁰

The frequent use of passive, one of the most common methods of emphasizing the impersonal in a language, and the predominant use of the third person singular and plural represent another characteristics of legal English. Legal language tends to use a highly formal, impersonal style, always in the third person. Passive voice, though it may appear too formal and even unnecessary, has a major role in establishing the form and tone of legal written and spoken text. Passive voice is essentially used in order to underline the action, not the actor. The intent is to create the impression that law is impartial and objective in its

⁷ Danet, B., 1985, p.285

⁸ *Ibid.*

⁹ Ahmad Abdelmoneim Youssef Masry Zidan, *A Linguistic Analysis of Some Problems of Arabic-English Translation of Legal Texts, with Special Reference to Contracts*, Cambridge Scholars Publishing, 2015, p.37

¹⁰ Federal Child Support Guidelines, art.7 (1)

dealings: *If any term or provision of this Agreement shall be deemed prohibited by or invalid under any applicable law, such provision shall be invalidated without affecting the remaining provisions of this Agreement, the Original Agreement or the Loan Documents.*¹¹ The omission of the first person singular is motivated by the efforts of achieving maximum objectivity: *Where a member of the Board ceases to be a member of the Board for any reason other than removal, the member may, despite anything in this Part, at the request of the Chairperson, carry out and complete any duties or responsibilities that the member would otherwise have had if the member had not ceased to be a member, in connection with any matter that came before the Board while the member was still a member of the Board and in respect of which there was any proceeding in which the member participated as a member.*¹²

The tendency to resort to nominalization (noun phrases are used instead of verb phrases) is another distinctive trait of legal language. Nouns derived from verbs are often used instead of verbs: *to give consideration* instead of *to consider*, *to be in opposition* rather than *to oppose*, *provision* as an alternative to *provide* etc. The intention is to reduce the length of the sentence and to give it a sense of impartiality.

Using in “such”, “said” and “the same” in legal language is quite different from using them in everyday context. The word ‘the same’ usually implies comparison to a similar object or person, but in legal use it refers to sameness of reference; “such” and “said” mean “this”, “that”, “the particular” or “one that is under consideration”.

Language is central to human affairs, but it is of vital importance for the purposes of the law.¹³ Law cannot exist without language.¹⁴ Legal language includes many different legal discourses and, although based on ordinary language, it has its specific lexical, syntactical and phonological features which arise difficulties in understanding it by the lay people. Language changes continually, but legal language is conservative, tending to resist change as it must be very precise, clear. It is not a language meant to be used every day. Legal language can be regarded as a variety of English, which serves highly specific purposes. It is a language having a very important function in determining social behaviour and bringing justice to all people in an objective and impartial way.

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¹¹ <https://www.lawinsider.com/clause/severability>

¹² Canada Labour Code (R.S.C., 1985, c. L-2), art.12 (2)

¹³ Trosborg, Anna, *Rhetorical Strategies in Legal Language: Discourse Analysis of Statutes and Contracts*, Gunter Narr Verlag Tübingen, 1997, p. 19.

¹⁴ Danet, B., 1985, p.273

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