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(NON-)AMBIGUITY IN LEGAL LANGUAGE: SYNTACTIC PERSPECTIVE

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Legal language specificities have for a long time represented an ongoing debate among linguists. When discussing the characteristics of legal English, Tiersma [1999] gives the following list of typical features: “lengthy and complex sentences, unusual sentence structure, wordiness and redundancy, conjoined phrases, frequent use of negation and impersonal constructions” [1999, p. 51]. Cao [2007] gives two general characteristics of the legal language: “impersonal constructions and extensive use of declarative sentences pronouncing rights and obligations” [2007, p. 22]. As she states, “the language used in law is predominantly prescriptive, directive and imperative. Laws are written in language the function of which is not just to express and convey knowledge or information, but also to direct, influence and or modify people´s behaviour, whether it be a legal enactment, judicial pronouncement or a contract. It authoritatively posits legal norms” [2007, pp. 13-14]. Mellinkoff [1963] states that “the language of law should not be different from the ordinary language without reason. For such differences, the following rationales are usually given: the legal language is more precise, shorter, more intelligible and more durable” [1963, p. 285]. Of these arguments, precision seems to be the leading feature of the language of law that should give reason to all the other features which are sometimes said to be its vices.

First of the above-mentioned points to be discussed here is lexical repetition in legal texts. In other words, these are *co-referential techniques* used by legal draftsmen who, in legal writing, “avoid the use of anaphoric devices or referential pronouns such as personal pronouns (*he*, *she*, *it* etc.) or the demonstrative ones (*this*, *that* etc.), in addition to the verb *to do* that may substitute a whole clause” [Sabra 1995, p. 31]. Pronouns can sometimes have ambiguous reference and the legal profession tends to shy away from them. This technique can indeed enhance precision. As a matter of fact, avoiding

pronouns is one of the most salient ways in which lawmakers try to enhance meticulousness of legal writing. They prefer to repeat nouns, hoping to avoid vagueness, rather than using pronouns that are common in ordinary speech. Consequently, “lawyers use pronouns only where the antecedent is very evident, and even then may decide to use a name or a noun instead. Such a procedure makes sense in documents like contracts, where it is essential to carefully distinguish the rights and obligations of two or more parties” [Tiersma 1999, p. 72].

Moreover, avoiding pronouns does have an unintended benefit: it reduces the use of sexist language. Such linguistic strategies reveal of the efforts to maintain a high degree of neutrality and correctness. As a matter of fact, the legal language is highly concerned with the exactness of reference; hence its tendency towards lexical repetition, and therefore to functional redundancy. Using anaphoric devices or referential pronouns would definitely increase ambiguity and confusion. When translating legal texts, it is commonly advocated to keep the same redundancy of the original text since it is a type of redundancy that is functional. So, the translator should ensure that the version proposed is without ambiguity, as is its original counterpart, giving way to wordiness of such documents. By way of illustration, consider these examples from the Official Journal of the EU:
(1) *Re: Application for annulment of the decision rejecting* ***the applicant′s*** *request for compensation for the fact that a letter concerning* ***the applicant*** *was sent by the defendant to* ***the applicant′s*** *lawyer, and a claim for damages.*
(1′) *Objet de l′affaire : La demande d′annuler la décision de rejet de la demande du* ***requérant*** *visant à obtenir un dédommagement du fait de l′envoi par la défenderesse d′un courrier concernant* ***le requérant*** *à* ***son*** *avocat accompagnée d′une demande indemnitaire.*
(2) *Accordingly, the role of the Community judicature is not passive and cannot be limited to assessing the merits of the positions taken by each of* ***the parties*** *to the dispute in strict adherence to the pleas and arguments put forward by* ***the parties****. The Community judicature does not merely act as a referee between* ***the parties****.*
(2′) *Pour autant, le rôle du juge communautaire n′est pas passif et il ne saurait être limité à l′appréciation des mérites des positions de chacune* ***des parties*** *au litige en s′en tenant strictement aux moyens et aux arguments invoqués par* ***celles-ci.*** *En effet, le juge communautaire n′a pas seulement pour fonction d′être un arbitre.*

In (1), the noun *the applicant / le requérant* is repeated three times in the English sentence, two times in the French one (the presence of possessive pronoun *son* is an anaphoric device referring to the person discussed). In (2), the noun *the parties* is repeated three times in the English sentence which implies a high level of redundancy. However, the French translation is vaguer and less precise, as it makes use of a pro-form *celles-ci*. This makes us believe that it was the English language that the documents were originally drafted in. The translation does not maintain the same exactness of reference. Nevertheless, despite the use of anaphoric structures, the translators into the French language managed to keep the message of both documents quite graspable due to the grammatical devices like word order (*concernant le requérant à son avocat* – the possessive pronoun is placed as to point clearly to its referent) and gender and number

(*de chacune des parties au litige en s´en tenant strictement aux moyens et aux arguments invoqués par celles-ci* – there is no other lexical item that feminine plural pro-form *celles-ci* could refer to).

It is claimed that "the legal language has an unusual amount of negation" [Finegan 2007, p. 332]. The profession´s favouring of the negative may be related to "the old-age notion that whatever is not explicitly forbidden is permissible. Consequently, the law is primarily about what people *cannot* do, and is logically phrased in the negative (consider *the Ten Commandments* – at least eight are primarily negative). Negatives include not just words like *not* or *never*, but any element with negative meaning, like the prefix *mis*- in *misunderstanding* or *un*- in *unreal*, and even semantic negatives like the verb *deny*. Multiple negation is also very frequent in the legal language (*innocent misrecollection is not uncommon* – this expression contains no less than three negative elements in a five-word phrase). Judges also tend to favour injunctions that are negative in form rather than positive. It is easier to tell people what they cannot do, rather than what they can. In fact, the preference for the negative is reinforced by the rule that a positive (mandatory) injunction is automatically stayed on appeal, while one that is negative (prohibitory) remains in force" [Tiersma 1999, pp. 66-67]. Sentences (3) and (3´), thanks to the negative structure, are explicit and clear enough as to leave no space for exemption clauses: negative injunction thus remains in force:

(3) ***No*** *Party may indicate its consent to be bound by this Protocol without having previously or concurrently indicated its consent to be bound by the Lisbon Agreement in accordance with the provisions of Article 22.*

(3´) ***Aucune*** *partie ne peut manifester son consentement à être liée par le présent protocole sans avoir préalablement ou simultanément manifesté son consentement à être liée par l'accord de Lisbonne conformément aux dispositions de l'article 22.*

The law tends to be phrased in a highly impersonal manner. An illustration of this impersonal style is the tendency "to steer clear of the first and second person pronouns. In spoken language, such pronouns are ubiquitous. If we had to order or command someone to do something, we would use the second person pronoun. Yet legal documents are almost always in the third person (*the sex offender shall register…*). The same normally holds for pleadings (*plaintiff alleges*) and contracts (*Buyer shall pay Seller*). Other examples of impersonal constructions include the common phrase *it shall be unlawful* or the provision that certain sorts of acts are *punishable as a misdemeanor*. One reason for using the third person is that legal documents are meant to be of general applicability and address several audiences at once. Such writing promotes an aura of objectivity, greatly desired by lawmakers" [Tiersma 1999, pp. 67-68]. Sentences (4) and (4´) avoid the use of 1st or 2nd person pronouns, which, in practice, means that the legislation put forward applies to all citizens; no one is en exception to the rule. Excessively long sentences, negative expressions and impersonal constructions thus make the the legal language what it should be, i.e. formal impersonal, objective, explicit, clear, authoritative, consistent, complex and structurally predictable. Still, all the advantages may (and do) represent a reason why legal writing creates a quandary for a non-technical audience.

(4) *While* ***it is important to*** *guarantee the rights of consumers by means of provisions that cannot be derogated from by contract,* ***it is reasonable to*** *allow enterprises and organisations to enter into other agreements.*
(4′) *S′****il importe de*** *garantir les droits des consommateurs par des dispositions auxquelles les contrats ne peuvent déroger,* ***il est raisonnable de*** *permettre aux entreprises et aux prêteurs de conclure d′autres types de contrats.*

Despite claims about the precision of the legal language, some of its attributes are "deliberately imprecise: passives and nominalisations often obscure the identity of the actor; whether done intentionally or not, it can only reduce precision. The basic sentence in English consists of a noun and then a verb, optionally followed by another noun: *The man injured the girl*. We know that *the man* is the subject of the sentence – and the actor – because it precedes an active verb. And we know that *the girl* was the person or object injured – because this noun phrase follows the verb. All we have to do is reverse the nouns to change *the girl* into the subject and *the man* into the object. Because of such a basic structure, we tend to anticipate that whenever a noun occurs at the beginning of the sentence, it will be the grammatical subject, as well as the actor, the person doing the action described by the verb. With such basic sentences, it is difficult to obscure the actor. The sentence must have a subject, and the subject is normally the actor. And what the actor did is also straightforwardly stated by a simple verb" [Tiersma 1999, p. 73].

Yet it should come as no surprise that lawyers wish to obscure or at least downplay the fact that their client was the actor who engaged in some kind of wrongful conduct. Their aim is "obfuscation, not precision. This is done by means of passive sentences that allow the speaker or writer to omit reference to the actor (as in *the girl was injured*). Lawyers use passives for strategic reasons: to deliberately de-emphasize or obscure who the real actor is. The legal language is often excoriated for overreliance on passive constructions. The possibility of leaving out the actor explains much of the profession′s affection for the passive constructions. Passives are impersonal, giving the documents an aura of objectivity and authoritativeness; this may explain why they are common in court orders. They are less common in contracts, where the parties typically wish to spell out exactly who is to do what, and thus have an interest in precise reference to the actors" [Tiersma 1999, pp. 74-75]. Consider the following some examples:
(5) *It became clear at the hearing that the security for delivery, which had been lodged by the exporter in accordance with Article 4(1) of Regulation (EEC) No 1354/83 when he removed the goods to be transported to the Middle East, was released as soon as it became clear that the goods* ***were damaged****.*
(5′) *Il est apparu à l'audience que la caution de livraison, qui avait été constituée par l'exportateur conformément à l'article 4 paragraphe 1 du règlement (CEE) n° 1354/83 lorsqu'il a emporté l'adjudication pour le transport des marchandises vers le Moyen-Orient, a été libérée au moment où il est apparu que les marchandises* ***étaient endommagées****.*

These sentences prove the "objectivisation" theory: by intentionally leaving out the actor, the drafter reduces precision of the document and misleads the reader who is unable to elicit who the guilty party is. His or her identity is concealed. The document is thus

less personal, less objective and the truth remains open for further dispute that may arise when trying to find out who fulfils the role of the malefactor.

Another syntactic device, like passive constructions, also can have the effect of de-emphasizing or obscuring the identity of the actor. This is the phenomenon of *nominalisation*. At least historically, “a nominalisation is a noun derived from another word class, usually a verb. For example, the nominalised form of the verb *injure* is *injury*; the same applies to the following pairs of words: *construct – construction*, *demonstrate – demonstration*, *insure – insurance*, *infringe – infringement*, *judge – judgment*, *see – sight*, *fail – failure*, etc. Many nominalisations are created by means of adding the suffix *–al* to the verb (*try – trial*, *propose – proposition*), or by the suffixation of *–er* (*demur – demurrer*, *waive – waiver*). Nouns can also be created from verbs by adding the suffix *–ing* to the verb, thus forming a *gerund* or a nominalised verb: *Injuring the girl was unforgivable*” [Tiersma 1999, p. 77]. Like passive constructions, nominalisations allow the speaker “to omit reference to the actor. Rather than having to admit that *the defendant injured the girl at 5:30 P.M.*, the defendant´s attorney can write that *the girl´s injury happened at 5:30 P.M*. In fact, the lawyer can depersonalise the incident even more by leaving out mention of *the girl* entirely: *the injury happened at 5.30 P.M*” [Tiersma 1999, p. 77]. A more legitimate reason for nominalisations is that of “allowing the actor to be omitted, they enable legal drafters to cover the possibility of *anyone* doing a specified act. This permits laws to be stated as broadly as possible, defining a number of acts as trespass, all of the expressed in form of nominalised verbs. Such a formulation is not precise at all, for the simple reason that the drafter is unable to specifically list every person, or even a class of people, who might be concerned” [Tiersma 1999, pp. 77-78], which is demonstrated the following instances of nominalisations:

(6) *The Member States shall not notify the Commission of irregularities in relation to the following cases: (a) where the irregularity consists solely of **the failure** to execute, in whole or in part, an operation included in the co-financed operational programme owing to the bankruptcy of the beneficiary; ...*

(6´) *Les États membres ne notifient pas à la Commission des irrégularités dans les cas suivants: a) lorsque l'irrégularité consiste seulement en l'**in**exécution, totale ou partielle, d'une opération couverte par le programme opérationnel cofinancé à la suite de la faillite du bénéficiaire; ...*

(7) *Provided that the provisions of the host Member State governing the duration of validity of driving licences or medical examinations may validly be applied to the holders of driving licences issued by other Member States and are not such as to undermine the principle of mutual recognition laid down by Directive 91/439, the method chosen to determine the date from which those holders must fulfil the conditions provided for in the host Member State's legislation cannot by itself amount to **a violation** of the principle of mutual recognition of driving licences.*

(7´) *Or, dès lors que les dispositions de l'État membre d'accueil en matière de durée de validité des permis de conduire ou de contrôle médical peuvent être valablement appliquées aux titulaires de permis de conduire délivrés par d'autres État membres et ne sont pas de nature à mettre en cause l'effet utile du principe de reconnaissance mutuelle*

posé par la directive 91/439, le mode choisi pour établir la date à partir de laquelle lesdits titulaires doivent remplir les conditions prévues par les dispositions dudit État membre d'accueil ne saurait être considéré, à lui seul, comme constituant ***une violation*** *du principe de reconnaissance mutuelle des permis de conduire.*

From the sentences illustrating the cases of nominalisations, we can observe that in (6), the noun *the failure* turns into the French term *l'inexécution.* Similarly, the semes of the English noun *failure* (i.e. to miscarry, to misfire as related to someone coming to harm, not being able to achieve the intended purpose, missing a pre-planned objective (e.g. *the scheme to save the stranded animals miscarried*; *the new ad campaign misfired*)) are transformed into the French negative prefix *–in,* having the same function as the French negation *ne – aucune.*

In conclusion, the reappearance negative and impersonal constructions and the frequent use of lexical repetition contribute to the general applicability of legal documents and thus enhance the non-ambiguity of the genre. Such attributes result in prescriptive and prohibitory character of legal texts, in its, precision, authoritativeness, timelessness, credibility, impartiality, unbiasedness and objectivity. Legal texts may be, at any time, subjected to intense scrutiny by specialists, trying to discover any formal deficiency on behalf of their clients. Legal drafters are obliged to predict such efforts. This is why they cover any remotely possible eventuality, even though their practice may conflict with the goal of basic, day-to-day communication. Still, some grammatical devices like passive constructions and nominalisations are in sharp contrast with the general aims of the legal genre as they are used in order to achieve strategic imprecision, which implies nothing but aura of objectivity. However, the epistemic and pragmatic level of the legal language prevails over its surface structure. Most of the features of the genre are used to achieve maximum accuracy and universality, covering distinct nuances of a concept and avoiding any insinuations.

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Summary

This paper addresses the syntactic realisation of legal documents from the point of view of the way that they contribute to the objectivity and desired non-ambiguity of the genre in question. Despite the existence of devices that do serve the above-mentioned purpose, some features act in a completely different way. Passives and nominalisations were closely linked to the objectivisation theory dealing with strategic, deliberate imprecision in legal documents. Nevertheless, most of the syntactic devices are employed to achieve the primary aim of the genre.