



Original Article
**Statutory Interpretation:
How Legal Reasoning and Linguistics Interact**

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Abstract: The relationship between law and language has been widely discussed as early as in 1963 when Mellinkoff published the well-known book ‘The Language of the Law’ in the US. The linguistic analysis presented in this paper is an attempt to study legal interpretation from an interdisciplinary perspective. In particular, it is intended to demonstrate actual disputes (mostly US cases) that require interpreting statutes as how legal reasoning and linguistics interact. Starting with a brief account of linguistic indeterminacy and different forms of indeterminacy in legal contexts, the author will then focus on various approaches provided by legal scholars and linguists when it comes to uncertainty in construing law. Finally, a Polish case study will be presented to exemplify how linguistic analysis, along with legal argumentation, can practically contribute to the effectiveness of legal drafting and interpretation.

Keywords: Legal construction, statutory interpretation, law-linguistics interaction, legal language, legal reasoning.

1. Introduction

“The law is a profession of words” - the opening statement made by Mellinkoff [1] in his very first book “The Language of the Law” - has so far inspired legal scholars and linguists alike to turn their attention to legal language. Likewise, Tiersma [2] confirms the inherent connection between language and law since ‘our

law is a law of words’. This assertion is based on the fact that regardless of varied sources of law in the Anglo-American legal system, all currently exist in the form of words and documents through the process of codification. Working with language that constitutes the law, therefore, has become an intensive focus for legal professionals whose job inevitably involves dealing with an array of normative

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documents ranging from statutes to judicial opinions. Also, it is essentially through language that an attorney can discuss legal matters, advise their clients, or argue in court. In many cases, the evidence presented to the judge exists in language forms such as recordings, notes, contracts, wills, deeds, etc. Law and language are so closely intertwined that ‘few professions are as dependent upon language’ [2].

However, it is also the fact that human language is characterized by indeterminacy or uncertainty [3,4]. Although one tends to assume that what they want to say/ write can be said/ written so clearly and precisely, our actual language use is inherently indeterminate. Discussing the indeterminate nature of language, Cao [3] points out that linguistic indeterminacy is associated with ambiguity, vagueness, generality and other such features as pervasive parts of language. This linguistic nature stems from the fact that ‘the universe and human behavior are inherently uncertain and indeterminate, law included.’ Specifically, this author gives as examples several words and phrases in legal English that she finds ‘vague and elusive’ such as *fair and reasonable*, *due process of law*, etc. as well as abstract legal expressions such as *justice*, *due diligence* and *reasonable endeavors*. Poscher [4], in agreement, notes that much of the work at high courts is concerned with disputes created by uncertainty in legal language:

Significant portions of the institutional legal system, especially courts at the appellate level and supreme courts, are for the most part concerned not with disentangling the facts of cases but with the indeterminacies of the law. Such highly developed institutional structures would not be needed if the law contained only clear-cut rules establishing precise legal duties and rights for each case.

Given that law requires clear, precise meaning to ensure justice and fair application, the indeterminate nature of language implies a marked contrast with the nature of law. In everyday communication, we can overcome obstacles arising from linguistic uncertainty through pragmatic strategies. The legal systems,

however, are expected to settle disputes over imprecise meaning by construing law with argumentation [5]. In such regards, this paper aims to discuss statutory interpretation in actual disputes (mostly US cases) as to how legal reasoning and linguistics interact. It begins with a brief account of linguistic indeterminacy and different forms of indeterminacy in legal contexts. This will be followed by a discussion on different approaches provided by legal scholars and linguists when it comes to uncertainty or indeterminacy in legal construction. Finally, a Polish case study will be presented to exemplify how linguistic analysis, along with legal arguments, can contribute to the effectiveness of legal drafting and interpretation.

2. Indeterminacy in Legal Language

Although the highest degree of precision is expected in legal drafting as a specialized genre, there is imprecision or uncertainty inherent in language used in law as characterized by the indeterminate nature of language in general. According to Poscher [4], a statute can suffer from disputes over meaning due to ambiguity and vagueness as two specific phenomena of indeterminacy.

2.1. Ambiguity

Basically, a sentence is ambiguous when it can be interpreted with different possible meanings [6]. The word *bank* exemplifies lexical ambiguity as this homonym can mean both ‘river bank’ and ‘commercial bank’. There is a large portion of homonymous words as such in the English lexicon, and they denote distinct meanings that can usually be disambiguated by the context. As in the case of *bank*, a situation related to money or payment, by common sense, will turn our interpretation to ‘commercial bank’ rather than ‘river bank’. Lexical ambiguity, thus, hardly poses threats to the effectiveness of everyday communication as well as legal interpretation.

More complicated and relevant to legal issues is ambiguity that occurs at syntactic level (amphiboly). Consider, for example, the sentence ‘the parents of the bride and groom were waiting outside’. One can understand that there were up to four people mentioned, consisting of the bride’s parents and the groom’s parents. Another possible reading indicates only three people (the bride’s parents and the groom) are involved. It is syntactically ambiguous as to whether the object of preposition in this sentence involves ‘the bride’ only or extends to ‘groom’ as well. The courts, in reality, have to settle more disputes concerning syntactic ambiguity [7,4]. Take the case of *California v. Brown* as an example. Giving instruction to the jury, the judge read: “You must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.” Multiple meanings are created in this sentence concerning the scope of ‘mere’ since it is uncertain if this adjective modifies only the adjacent noun or all the subsequent ones. Given that the precise meaning of jury instruction in this case is essential in ensuring the defendant’s right to enlist mercy, the Supreme Court had to decide if this sentence is ambiguous, and thus, affecting the jury’s understanding.

2.2. Vagueness

As for vagueness, this form of indeterminacy is more concerned with borderline cases. As Grice [8] notes, a borderline case occurs when ‘one just does not know whether to apply the expression or withhold it, and one’s not knowing is not due to ignorance of the facts.’ A widely discussed example concerning vagueness is a hypothetical legal rule: ‘No vehicles in the park’ [9]. Obviously, this rule bars vehicles from the park, so you cannot drive cars or motorcycles in. However, does this rule apply to kid bicycles or tricycles, scooters, and skateboards as well? Given that this park forbids vehicles, does it constitute a violation if someone drives a lawnmower or health workers to enter by an ambulance to assist an injured person in the park? Questions as such are concerned with

borderline cases because we do not know whether we should apply the expression *vehicles* or withhold it. We might have all kinds of knowledge about kid bicycles or tricycles, scooters, skateboards, lawnmowers, or ambulances. Still, these are borderline cases since it is indeterminate whether they should be considered “vehicles” within the scope of this rule.

Poscher [4] notes that different from ambiguity which speakers can resolve through context, the uncertainty of meaning in vagueness is independent of speakers’ competence. Given the difference between ambiguity and vagueness, both forms of indeterminacy can be found in a single expression. A good example is when a will provides that money will be donated to “charitable institutions and organizations” [10]. On the one hand, vagueness is relevant because questions about borderline cases can arise as to precisely which entities falls into the extension of ‘institutions’ or ‘organizations, and what activities should be considered ‘charitable’. This expression, on the other hand, is syntactically ambiguous because it is not certain as to whether the ‘charitable’ requirement applies to the adjacent noun only or both that follow it.

Taken together, the indeterminate nature of language is generally associated with ambiguity and vagueness. In that sense, the language used in legal settings is not an exception. While ambiguity arising from homonyms is rarely a problem in law, the legal systems more frequently encounter disputes involving syntactic ambiguity. Also, a vague expression can require legal interpretation as to whether a particular case or entity fits within that (legally stated) concept.

3. Views and Approaches to Legal Interpretation

Given that linguistic indeterminacy in law is inevitable, there have been undoubtedly a large number of disputes over meaning that the legal systems have to settle. In fact, Justice Scalia of America noted thirty years ago: “...every issue

of law I resolve as federal judge involves interpretation of text – the text of regulation, or of a statute, or of the Constitution” [11]. At this point, it is relevant to examine what methods or approaches have been mainly discussed in the history of statutory interpretation.

3.1. Interpretive Theories

Although the literature on interpretive theories identifies three separate approaches [12], the discussion usually focuses on two opposing sides: intentionalism/purposivism and textualism/originalism [13]. As the terms suggest, interpreters who support the intentionalist/ purposivist view take into consideration the legal process in which the legislature was enacted. The job of interpretation as deciding what the law means, therefore, should be based on the original intent of the drafters or legislators, the legislative history, as well as what problems the statute was aimed to address [14]. A well-known case concerning statutory meaning in this regard is *Church of the Holy Trinity v. United States*, decided in 1892 by the Supreme Court. The Church had hired an English pastor, which could have constituted a violation of a federal law that banned paid transportation of a person into the U.S. to perform ‘labor or service of any kind’. At the heart of the issue is the question as to whether the expression ‘labor or service of any kind’ in the statute applied to a religious rector. In a unanimous decision, among other things, the Court argued in favor of legislative history, stating that the law was enacted to prevent enormous migration of manual workers into the country rather than a distinguished member of clergy. In other words, legislative purpose/intent was used to bolster the Court’s arguments in this case. In multilingual jurisdiction, purposive interpretation was also applied as in the EU case *Fonden Marselisborg Lystbadehavn v. Skattenministeriet* [10]. Despite the fact that the case concerns a Danish company and that the Danish version of the Directive defined ‘vehicles’ as ‘land-based transport on wheels’, the court decided that ‘boats’ falls within the

concept of ‘vehicles’ on the basis of the purpose and general schemes of the rules. Concerning how to interpret the expression ‘no later than X months from the date Y’, Araszkievicz [5] even proposes a reasoning model that fixedly incorporates legislative intent as teleological argumentation.

Textualism/ originalism, however, is more concerned with the ‘plain meaning’ of the statutory texts [12]. Textualists, like Justice Scalia, argued against intentionalism/ purposivism, claiming that what binds us is the language of the statute that has been enacted, not the intent of the lawgivers. Also, legislative intent is such an elusive concept that we cannot ascribe a single intent to a body of hundreds of legislators. Imposing inferences and hypotheses about what the legislators must have been thinking at the time of enactment, the judges will be likely to introduce their own values into the judging process [13]. Instead, those engaged in textualism ground their analysis on the ordinary meaning rule to achieve a ‘fact-based and objective’ interpretation [15]. Accordingly, when the statute does not define a term or expression, its ordinary meaning should come into play. As an example of textualism/ originalism, consider *Smith v. United States*, another widely discussed case that the Supreme Court decided in 1993. Under a statute that makes it a crime to use or carry a firearm ‘during or in relation to...drug trafficking crime’, Smith was prosecuted as he was caught trading his gun for cocaine. The task of interpretation in this case was to decide whether the act of trading a gun for the drugs falls within the ordinary meaning of ‘use a firearm’. Disagreements occurred among the justices, the majority of whom adduced dictionary definitions, determining that what Smith did constitutes a violation since we can ‘use’ something as tools of barter. The dissenters, represented by Justice Scalia, argued that ‘In search for statutory meaning, we give nontechnical words and phrases their ordinary meaning...To use an instrumentality ordinarily means to use it for its intended purpose’ [13]. Thus, speaking of using a gun is most likely to mean that the gun was used as a weapon, not

merely as a thing of value for exchange like money. As Solan [15] notes, this case, in fact illustrates the dilemma of ordinary meaning rule. On the one hand, meaning is ordinary when it fits the dictionary definitions and speakers' intuitions in a particular context. To the dissent, on the other hand, a word means ordinarily if that sense pops up first in the speakers' mind, something closer to prototypical or prevalent meaning. Textualism/ originalism, all in all, places a strong emphasis on the plain meaning of the texts under interpretation.

3.2. Linguistic Approaches to Legal Interpretation

In many cases, problems of legal indeterminacy can be resolved effectively through linguistic analysis. Linguists such as Solan [7] and Kaplan [13] claim that certain legal issues presented to the appeal courts are of linguistic nature. A good example is the 1984 case *United States v. Yermian*, in which the Supreme Court, in a 5-to-4 decision, debated over the scope of adverbs. Yermian, a defense contractor employee in California, lied in his security clearance form by hiding his past conviction for mail fraud. As his false statements were discovered, he was charged under the statute that reads: 'Whoever, in any matter within the jurisdiction of any agency of the United States knowingly and willfully...makes any false statements...shall be fined...or imprisoned' (Section 1001 of the federal Criminal Code). In his defence, Yermian admitted that he did knowingly make false statements, but he had no idea that the form would be sent to the Defense Department. In other words, he just thought he was making false statements to his employer, not within the jurisdiction of a federal agency. At the heart of his defence is a linguistic question as to whether the adverbs 'knowingly' and 'willfully' modify the prepositional phrase 'in any matter within the jurisdiction of any agency of the United States'. If they do, and this statutory provision is syntactically ambiguous, the court should apply the rule of lenity, construing law in favour of the defendant. However, this structure is

unambiguous, and the Supreme Court got it right by rejecting this defence. What is worth noting is that this decision was not unanimously reached, with up to four justices incorrectly finding the language of the statute ambiguous. The ability to identify ambiguity is part of our linguistic knowledge, but as this case shows, the syntax is difficult for non-linguists, even the brilliant Supreme Court justices. Examining several cases in which judges failed to make linguistically correct decisions, Solan [7] suggests the necessity of linguists as expert witnesses when it comes to issues decided on linguistic grounds.

From a linguistic perspective, Durant and Leung [10] present legal interpretation as a specialized approach that follows strategies in everyday conversation, noticing both linguistic and contextual cues like speaker intention. Accordingly, those engaged in construing law must take into account not only the linguistic meaning of the texts but also legal considerations such as the purpose of the law. Such linguistic approach, in other words, requires analysis from a coordination of textualist as well as purposivist views. Reference to purpose in legal interpretation is linguistically justified on the ground that word meaning should be positioned in a particular context, including the discourse cues such as the title of the legislative act and the surrounding words, as well as the relevant situation or background knowledge in the same way we interpret utterances in everyday conversation or casual reading.

As for vagueness in law, the task of deciding on borderline cases is actually concerned with the scope of word meaning [10]. Interpretive issues as to whether X (a reported fact) falls within Y (a legally stated concept) are, linguistically speaking, about the sense relation of hyponymy: Is X a member of a superordinate Y class? Modern semantic theories such as Katz and Fodor's [16] system of semantic features indicate that 'a kid tricycle', while having wheels, lacks an engine as the essential attribute of the category 'vehicles', explaining why its meaning can be uncertain in a relevant legal setting. Based on goodness-of-exemplar

characteristics, Rosch's [17] theory of prototypes suggests that while both 'use a gun for its intended purpose' and 'use a gun as tools for barter' fall within the concept of 'use a firearm', the former meaning is prototypical or of core exemplar and the latter is less representative of the category. These semantic models of category, in fact, come into play in interpretive analysis. Still, how do judges decide which meaning is ordinary as how the word is most likely understood? Besides individual intuition and dictionary definitions, Tobia [11] identifies the pattern of word usage as one of the most popular sources of evidence. In that sense, corpus linguistics has been widely discussed as an empirical tool for identifying the "original public meaning" [15].

Taken together, to tackle legal indeterminacy, the legal systems have engaged in textualism/ originalism and intentionalism/ purposivism as two opposing approaches, concerning whether the focus should be placed on the plain meaning of texts or the legislative intent. Legal interpretation, on the other hand, is closely related to the theories of language, specifically on syntax and semantics. Linguistically speaking, while textualists emphasize the examination of linguistic cues, purposive interpretation pays more attention to word meaning in the larger context of legislative history. As a linguistic method, corpus linguistics has also been useful as a reference tool for finding ordinary meaning through actual usage data. What follows is an interpretive case that practically illustrates how legal arguments and linguistics can be brought into play to cope with ambiguity.

4. Case Study

Although most of the cases discussed so far represent interpretive problems in the American Common law system, it is not intended to state that the interface between legal interpretation and linguistics is little relevant to other legal traditions. For this reason, a case study under Polish law, which is based on the continental

legal system (Civil law tradition), will be selected for detailed analysis in the current part.

This case was settled by the Polish Supreme Administrative Court (PSAC) in 2006, with regard to an indeterminate provision from the Inheritance and Donation Tax Act of July 28, 1983 (the Act). Although the general rule is that people who gain property and monetary rights from inheritance and donation must pay tax, there are many exemptions one of which is concerned with housing. Among several conditions that must be fulfilled for this tax relief, it is important that the taxpayer does not dispose of (sell or donate) the inherited property for the period of five years from the date it is acquired. The purpose of this condition is to promote the use of the estate as the residence for younger generations for at least the prescribed amount of time. Therefore, if the property is transferred to a third party in less than five years from the date of acquisition, it is subject to taxation since the exemption is no longer applied. Still, taxpayers can be exempted from this five-year requirement under the following provision:

The disposal of acquired property does not lead to the termination of the exemption if it is justified by the necessity of a change in living conditions and if the acquisition of another building, the acquisition of permission for building, or the acquisition of a premises takes place no later than 6 months from the date of disposal [5].

Put simply, this exception to the five-year rule requires two conditions that must be jointly met. Although the first condition can cause indeterminacy due to the vague term 'necessity', the application of this provision encounters disputes over the meaning of the second condition. Blaming the expression 'no later than', Araszkievicz [5] identifies two possible readings that are incompatible:

i) [acquisition of new property no later than 6 months after the date of disposal] = [acquisition 6 months after the date of disposal] OR [earlier acquisition].

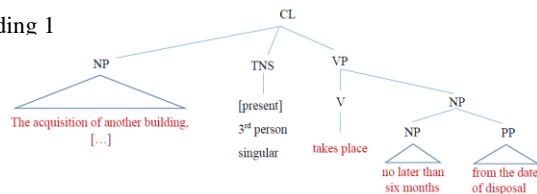
ii) [acquisition of new property no later than 6 months after the date of

disposal] = [acquisition 6 months after the date of disposal] BUT NOT [earlier acquisition].

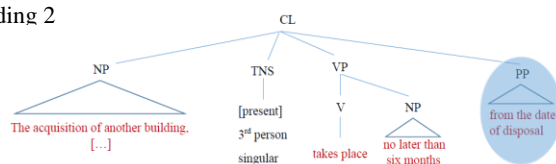
It is clear from the rule that the owner of an inherited home can sell it and buy a new one without losing tax exemption in a period of six months. However, legal interpretation was required as to whether this condition allows (exempted) taxpayers to buy a new home before transferring the inherited property as well. It is worth noting that this provision created considerable disagreements among courts, with some supporting reading 1 and others arguing in favour of reading 2. When the case reached PSAC, the interpretive question was examined with reference to negative consequences or legislative intent. Based on the premise that statutory expressions should be interpreted in a way that avoids negative consequences, reading 1 was rejected on the ground that this interpretation allows acquisition of new property even before the testator is deceased, which is irrelevant to tax exemption for the acquisition of property by inheritance. Since the two readings are contradictory, the rejection of reading 1 results in the adoption of reading 2.

Although Araszkievicz [5] attributes ambiguity to ‘no later than’, linguistically speaking, it is the scope of ‘from the date of disposal’ that matters in this case. Thus, the interpretive question is actually whether this prepositional phrase modifies the preceding noun phrase only or the whole clause that constitutes the second condition. The tree diagrams below show how the two readings are differently structured in terms of syntax:

Reading 1



Reading 2



By nature, indeterminacy in this case is created by syntactic ambiguity (as in previously discussed cases *California v. Brown*, *United States v. Yermian*). In reading 1, the prepositional phrase (PP) modifies the preceding noun phrase (NP) only, constituting the meaning that a new acquisition of housing can occur after the date of disposal or earlier. Reading 2, however, reflects that the whole clause (CL) is affected by the prepositional phrase, including ‘the acquisition of another building, [...]’ which can only happen after the date of disposal. As this case law shows, linguistic interpretation identifies two readings but cannot help decide which meaning should be accepted. Courts and legal scholars were all aware of the two contradictory readings, and it was through legal arguments (i.e. purposivism in this case) with complicated long legal proceedings that the dispute could finally be resolved. Nonetheless, the linguistic analysis could have contributed in two aspects. Although we all have intuitions about language, a linguist who is more sensitive in identifying linguistic issues like syntactic ambiguity can be of great help when it comes to reviewing legislative drafts. Also, understanding the source of ambiguity, a linguist knows how to fix the indeterminate provision. In this case, the provision is no longer ambiguous if the prepositional phrase (the shaded part) is moved to the front, making the clause newly read as ‘from the date of disposal, the acquisition of another building, [...] takes place no later than six months’. By doing this, we can eliminate reading 1 in the texts since its structure blocks the prepositional phrase within the larger noun phrase. This is not the case for reading 2 as the prepositional phrase is free and can move to the front. Linguistic contribution in this case is, thus, to ensure the quality of legal drafting so that legal interpretation will be less a burden for the legal system.

4. Conclusion

The linguistic analysis presented in this paper demonstrates an interdisciplinary

contribution to the study of statutory interpretation, a topic that traditionally falls within the fields of legal theories, jurisprudence and philosophy of law. Given that law and language are closely intertwined, indeterminacy in law is inherently derived from the indeterminate nature of language that constitutes the law. In such regards, both legal studies and linguistics can offer different methods and approaches to legal interpretation. While the legal systems have engaged in textualism/originalism and intentionalism/purposivism as two opposing views, depending on whether the focus should be placed on the plain meaning of texts or the legislative intent, construing law is also relevant to the linguistic theories of syntax and semantics. In search for ordinary meaning, the textualists or originalists have additionally found corpus linguistics useful as a reference tool through actual usage data. Practically, the Polish case study on interpreting an ambiguous provision has given insights into how legal argumentation and syntactic analysis can interact to offer a joint solution. All of this suggests that both legal reasoning and linguistics should be brought into play to cope with legal indeterminacy. As shown in the case study, whereas legal reasoning helps to select the preferred interpretation that suits the legislative intent and avoids negative consequences, linguistic analysis can detect the source of indeterminacy and guide statutory review as well as amendments.

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