

# LEGAL WRITING IN LIGHT OF GRICE'S COOPERATIVE PRINCIPLE

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**Abstract:** The law is closely connected with language, its meaning and interpretation. This article tries to provide an insight on how language operates in the legal setting. The analysis of the language of the law is based on the study of acts and bills (legislative texts), and contracts, agreements, last wills and testaments, affidavits and other deeds (legal documents). The article concentrates on pragmatics of the language of the law, particularly on the problems of transmission, status and quality of messages in the legal setting. It analyses the nature of the language of law, the relationships which exist between law and language. It tries to examine legal communication in light of Grice's maxims and to look for causes that violate these maxims.

**Key words:** language of law, legal communication, legal environment, Grice's principle, violation

## Introduction

According to Longman Dictionary of Contemporary English (1985: 1000) society is defined as *a particular broad group of people who share laws, organisations, customs, etc.* Each society is divided and subdivided into many bigger and smaller groups and subgroups that perform roles of different importance. The most important groups exert their power and influence to affect the views and acts of the other groups and subgroups with the aim of gaining leading positions and high rank status in it.

## 1 Connection between the Society, Law and Language

Members of a civilised society live in the world of rights and obligations. Thus every society has to create sets of laws. It uses its legal system as a device through which it defines the rights of its members and forces them to perform their obligations and duties. "Laws are in essence attempts to control human behaviour, mainly through system of penalties" (Gibbons, 1994: 3). The law is a system of rules that every member of society and every citizen in a country must obey. It punishes murders, manslaughter and thefts but also bad faith in business dealings. . The rights and obligations of members of society have not always existed in a written form. Before they were arranged into laws they had been expressed and spread orally. "In literate cultures, once norms and proceedings are recorded, standardised and institutionalised, a special legal language develops, representing a predictable process and pattern of functional specialisation" (Maley, 1994: 11).

### 1.1 Language and law are inseparable

According to Longman Dictionary of Contemporary English (1985: 1000) society is defined as *a particular broad group of people who share laws, organisations, customs, etc.* Each society is divided and subdivided into many bigger and smaller groups and subgroups that perform roles of different importance. The most important groups exert their power and influence to affect the views and acts of the other groups and subgroups with the aim of

gaining leading positions and high rank status in it. Members of a civilised society live in the world of rights and obligations. Thus every society has to create sets of laws. It uses its legal system as a device through which it defines the rights of its members and forces them to perform their obligations and duties. “Laws are in essence attempts to control human behaviour, mainly through system of penalties” (Gibbons, 1994: 3). The law is a system of rules that every member of society and every citizen in a country must obey. It punishes murders, manslaughter and thefts but also bad faith in business dealings. . The rights and obligations of members of society have not always existed in a written form. Before they were arranged into laws they had been expressed and spread orally. “In literate cultures, once norms and proceedings are recorded, standardised and institutionalised, a special legal language develops, representing a predictable process and pattern of functional specialisation” (Maley, 1994: 11).

### *1.2 Language of the law*

Language of the law functions as a spoken and written medium for exchanging information between/among people participating in various legal situations happening in different legal settings. For centuries it has succeeded in keeping its special status. Legal language is a distinctive genre of English. Maley considers it “a medium, process and product in the various fields of the law where legal texts, spoken or written, are generated in the service of regulating social behaviour” ( 1994: 11). From historical records it is apparent that language of law has always differed from common-use-language. It has been too difficult for a layman’s mind to comprehend legal writing.

The term legal language, as Bhatia (1994 101) indicates, “encompasses several usefully distinguishable genres depending upon the communicative purposes they tend to fulfil, the settings or contexts in which they are used, the communicative events or activities they are associated with, the social or professional relationship between the participants taking part in such activities or events, the background knowledge that such participants bring to the situation in which that particular event is embedded and a number of other factors”.

Legislative and legal language is a distinctive genre of English. From historical records it is apparent that the language of the law has always differed from common-use-language. It has been too difficult for a layman’s mind to comprehend. For centuries it has succeeded in keeping its special status.

### *1.3 The influence of the context on the form, content and interpretation of a legal message*

We think that there are some non-linguistic elements of the real world that play an important role in pragmatics of communication. The members of the Prague School of Linguistics seem to have developed certain pragmatic features in language understanding. Many ideas of Daneš, Firbas, Isačenko, Jakobson, Mathesius, Vachek, and Trubetzkoy have influenced modern linguistics. Prague Linguistic Circle emphasises the importance of function. Its approach deals with language as an instrument of social interaction rather than a system that is viewed in isolation. The inclusion of extralinguistic factors such as the social environment is one of many important contributions of its members.

Halliday (1978: 75) uses the term social context that is “the environment in which meanings are exchanged”. According to him the social context of language can be analysed in terms of three factors:

- 1/ the field of discourse which refers to what is happening, including what is being talked about;

- 2/ the tenor of discourse which refers to the participants taking part in this exchange of meaning, to who they are and to what kind of relationship they have to one another;
- 3/ the mode of discourse which refers to what part the language is playing in this particular situation, for example, in what way the language is organised to convey the meaning, and what channel is used – written or spoken or a combination of the two.

In J. Kořenský's view (1997: 32) "all legal communication takes place in society. In the past decades certain tendencies encouraging the understanding of the linguistic side of the law only within the context of the theory of verbal communication have appeared. All activities examined under the roof of forensic linguistics have to be understood within verbal-communication context" (J. Kořenský, 1997: 27). It is the real world where the language of the law has been used for centuries and has been intensively influenced by it. It creates the space where the language of the law operates. It influences the form, content and interpretation of a legal message. Kořenský sees the Czech language of the law as a *specific functional language* developed within the framework of the Czech (or any national) language. His statement that it "covers a functionally definite area of speech activities within a given society" (ibid) is taken here as a basis for understanding the language of the law as language in function and use.

## 2 Grice's cooperative principle

The examination of legal language in the light of Grice's cooperative principle (CP) (1975: 77) may bring some enrichment to the study of legal communication. They are also called *Grice's four maxims*: maxim of quality, maxim of quantity, maxim of relation and maxim of manner. All the maxims reflect the nature and the content of a communicating message.

### 2.1 Maxim of quality

The *maxim of quality* is the matter of the truth or falsity of what is being said. Out of the four maxims, it is considered to be the fundamental principle. "Other maxims are supposed to come into operation only when the Maxim of Quality is satisfied" (Tarnyiková, 2000: 298). It is very important for legal writing as "it seems to reflect what might be called 'ethical' conditions for communication, i.e. that interlocutors will only say what they believe to be true and have evidence for what they say" (ibid: 298). In the legal setting the creator (author/writer) undertakes certain commitment to the target addressee(s) as well as to other lawyers that a particular state, a situation exists in the world, and what he permits is permissible, what he requires is 'requireable'. To be co-operative does not only mean telling the truth. Three more maxims have to be fulfilled.

### 2.2 Maxim of quantity

The *maxim of quantity* is the matter of informativeness. The quantity maxim requires that the information given has to be informative enough. The amount of information has to be sufficient to achieve the comprehension of the hearer/reader. It should include neither more nor less information than required. It should not be crowded with ineffective words. In legal writing the maxim of quantity seems to be violated. We cannot say that the reader of legal writing is given less information. Legal texts seem to be '*overinformative*' and *overcrowded* with 'awkwardly' presented information. It is apparent violation of the maxim of quantity as the creator (author/writer) does not try to be as brief as possible.

### 2.3 Maxim of relation (relevance)

The *maxim of relation (relevance)* expresses that the information given has to be relevant in content. *Relevance* means that communication message has to relate to what has been said before. Tarnyiková (2000: 299) defines the relevance as “the organisation of utterances as relevant to on-going context”. With respect to this we can say that the abiding by this maxim is doubtful.

### 2.4 Maxim of manner

The *Maxim of manner* expresses that the information given has to be appropriate in manner. The (creator) author/writer of a legal text has to write in a way that the reader will understand him. It means that in order to be understood good writers should write from the perspective of the reader. It is obvious that the maxim of quantity and manner seem to be violated in the legal setting.

There are many spheres, including a legal setting, where Grice's maxims are deliberately or non-deliberately violated. The violation of any of the four maxims may cause misunderstanding.

## 3 Causes of Grice's principle violation

On the basis of the analysis of the legislative and legal texts and pragmatics of legal environment we observe that the violation of Grice's principle is caused by the following reasons:

### 3.1 Nature of legal communication

The violating of the maxims is caused by general nature of the legislative and legal writing that results from the general function of the law system, which is to impose duties and obligations and to confer rights, to define permissions and prohibitions, i.e. to say what must, may and must not be done.

Legal communication is not a typical everyday communication act between Speaker/Writer and Hearer/Reader. Legal communication is a social legal interaction which occurs at a certain time and in a certain place between its general participants in a legal environment.

The manner of legal written communication differs from the way of general written communication.. Reader in legal communication, e.g. in statutes, is not a specific person but a non-specific addressee, a hypothetical legal subject who has to decode the message sent to him by Sender - the legislative body of the country who is the Author of the message and who creates the content of the message. Writer in legal communication is a 'draftsman' who creates the form of the message. I would dare to say that a legal message is targeted at an ordinary citizen. A lawyer in legal communication accepts the role of a mediator, an interpreter, a decoder, who conveys the Author's/Writer's message, the meaning as well as intention to a client. In a legal communication process the Author's role seems to be very important. It is Author who supervises the communication, dictates the interaction of the participants and punishes the Hearer for failing in recognising the content of the message through the net of judicial institutions.

Writer seems not to be as important, he plays a passive role. In spite of this his knowledge of language, grammar, lexicon, and style can influence the quality of Hearer's reaction to the written message in a positive as well as in a negative way. A badly created message may have negative effects on Hearer. The target hearer's social and cultural

backgrounds are different from Author's/Writer's. Unlike Author and Writer he is not a legal professional, his knowledge of legal language is poor, he feels uncertain in legal setting and he must function in the environment.

### *3.2 Legal environment*

The legal language as well as the quality of legal communication may also be influenced by legal environment. Legal environment is created by the legislative body, the legal system, judicial organizations, legal professionals, their behaviour, their effort and willingness to cooperate with a layman, target user of a legal message, the ways of judging and dealing, legal culture. We agree with Smith (1995: 190) that the language of the law “results from legal traditions, thought, and culture”. The legal environment, everything what creates it, is hidden in legal writing, influences the content and the form of a legal message as well as the participants of legal communication.

Legal writing is stationary, costly and encrusted with tradition. Lawyers use an old, dead language and they often use grammatically incorrect sentences.

In conclusion we can say that any communication cannot be successful if its main participants do not understand each other. Legal writing is legally binding for Reader. The law is precise and everything concerning law has to be said in a precise form in order to convey a meaningful message to the target audience. The language barrier has to be eliminated to the minimum. It is very important to know who a real Reader in legislative written communication is. Any legal document has to be tailored to the needs of a target Reader. Everyone agrees that it is very difficult to create a message for a non-specific person, for a hypothetical legal subject. A complex legal message necessitates general, all-inclusive, and at the same time clear language so that it can address both professionals and laymen.

### *3.3 Precision and all-inclusiveness versus complexity*

The creators of legal texts have a twin task: they have “to be aware of the age-old human capacity to wriggle out of obligations and to stretch rights to unexpected limits and have to guard against such eventualities” (Bhatia, 1994a: 102). At the same time they must not harm their addressee(s)/client(s) and they have to work for their best advantage. It means that legal writing must be both precise and all-inclusive. It is the goal of each creator of a legal text.

Creators of legal texts are aware of the impossibility to design model context identical to the real one and therefore, they use all the possible linguistic means to achieve their goal: to be precise and all-inclusive – to the maximum extent.

In legal writing clarity and precision seem to be gained by complexity. All the devices used for achieving clarity and precision make the writing very complex and complicated. Crystal & Davy (1986: 197) support the idea by stating, “Legal documents have often taken form of one sentence with very little punctuation”. The sentences are mostly nominal; contain a huge amount of qualifications whose role is to make the text “extremely restricted” (Bhatia, 1994b: 111). He also adds that legal draftsmen use a lot of qualifications and they “try to insert them right next to the word they are meant to qualify, even at the cost of making their legislative sentence inelegant, awkward, or tortuous but never ambiguous” (ibid: 112). Bhatia speaks about ‘understandability’ of legal language to legislative and legal experts not to a final addressee. Bhatia (1994a: 156) says, “the parliamentary draftsman needs to condense his longish provisions into somewhat more precise, unambiguous and all-inclusive statements by incorporating all types of possible conditions and contingencies that may arise during the course of interpretation of a particular legislative provision”.

### 3.3 Incongruence

There is an 'incongruence' between the capacity of professional communication of the creator (author/writer) of a legal text and a layman as they do not share the same general and professional knowledge. The most obvious paradox of legal writing lies in the contradiction between the character of texts, which are supposed to be precise and clear, but at the same time all-inclusive and complex. These qualities are reflected in the use of specific linguistic devices, such as nominalisation, qualifications, repetitions and complex prepositions, which make legal writing more precise and more all-inclusive.

### 3.4 Specific linguistic devices

Nominalisation is very ancient and trusted linguistic device used by the legal expert to achieve condensation and all-inclusiveness in his writing. Using nouns instead of verbs enables a creator to premodify one noun with a great number of adjectives, thus giving it different attributes. Qualifications and repetitions, and complex preposition also belong to the linguistic devices used to make legal writing more precise and more all-inclusive. The existence of as all above-mentioned devices makes legal writing more precise, more all-inclusive, more formal but at the same time more complex and complicated.

## Conclusion

It is apparent that everything in legal language is subordinated to the effort to achieve precision and avoid ambiguity. This obsession is predominantly the cause for violation of Grice's principle in legal communication. Thus, language used in the legal setting is understandable to the specialist community but it keeps non-specialists at a respectable distance.

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