University Mohamed Kheider of Biskra Master One

Faculty of Letters and Languages Applied Language Studies

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Legal Discourse

Introduction

In virtually all modern legal systems a distinction is drawn between the civil and criminal law. Usually a separate system of courts and procedures are built around this differentiation. The English system is no exception. The functional difference between the civil and criminal law is that in the latter, the state is concerned to enforce the law by ensuring that a legally binding code of conduct is observed throughout the country. In the civil law, the state does not have an official role, other than to provide a framework for settlements or torts, and property disagreements. The civil law has been built up gradually over the centuries and it defines the rights and duties of the individual in his/her relationships with others. Although we have so far made the distinction between civil and criminal law, there are also a number of other legal demarcations, the split between private law and public law being a relevant example. The former deals with individuals claims against each other and the latter works at cases in which the public at large have the majority interest.

On the other hand, legal discourse is a highly specialized use of language requiring a special set of habits. Obviously, the analysis of legal discourse needs painstaking attention to detail and sensitivity to the consequences of subtle contextual changes; in fact, this kind of language represents a complete departure from our everyday use of language. Understanding why legal discourse is the way it is can help the advanced English language learner to develop a kind of textual model, a sense of how language functions in this kind of discourse. Indeed, the comparison of ordinary language to legal language reveals some differences, one can note how sensitive legal terms are to changes in context, the specific "setting" in which they are used. It is equally important to discuss and contrast the familiarity with similar legal models in the native language, for example to analyse the same kind of documents or instruments. At last, one can assert that every society has its own social, judicial and political system, and every language has its particular characteristics following the domain where it is used.

1. The British Judicial System

There is a basic division in English law between Summary Criminal Offenses and Indictable Offenses. Summary offenses are dealt with by the local Magistrates' Court and are associated with prosecutions brought by the police. For example, road traffic offenses, petty larceny, assault. The magistrate can fine defendants up to £2,000 and send them to prison for 12 months. Indictable offenses are dealt with in the Crown Court. They are offenses such as rape, homicide, perjury, major theft and fraud. Trials in Britain are based on the jury system by which members of the public are called to listen to and give a verdict on cases.

Yet the jury system came perilously close to extinction, when both the last Conservative Home Secretary, Michael Howard, and his first Labour successor, Jack Straw, pushed hard for severely restricting the right to trial by jury in the late 1990s. This appeared desirable both on the grounds of cost- trial jury is an expensive process- and of efficiency- it can be long and cumbersome. But this project was vigorously opposed by the legal profession, which stressed that putting an end to the jury system would seriously undermine the fairness of the judicial process. In the end, the idea was dropped in early 2002, after several heavy defeats in the House of Lords.

One of the central principles of the legal system in England is that a defendant is innocent until proven guilty. In criminal cases the decision rests with a 12 person jury. They have to be convinced "beyond all reasonable doubt", that the accused is guilty. Otherwise they must find the defendant innocent. Once the sentence has been pronounced, the defendant has the right to stand in front of the Court of Appeal. To succeed in appeal, the defendants must usually produce new evidence to support their case or show that a legal irregularity or mistake took place during the original trial. An appeal cannot be argued on the simple grounds that the jury made a wrong decision. Nevertheless, some senior law lords have criticized the system of appeals for failing to quickly correct cases in which miscarriages of justice have taken place.

2. Branches of the British Civil Law

- **2.1 Tort:** this comes from the medieval word meaning twisted or wrong. It is mainly concerned with wrong or alleged wrong conduct by one individual against another, for instance, negligence, defamation, nuisance or trespass.
- **2.2 Contract:** this deals with the enforcement of legally binding agreements entered into by both parties.
- **2.3 Family Law:** this includes law relating to marriage, divorce, maintenance and custody of children.
- **2.4 Constitutional and Administrative Law:** this law attempts to define exactly where the individual stands in terms of personal liberty. Constitutional law is

concerned with the existing organs of government. Administrative law deals with local government and public corporations and usually takes the form of tribunals and inquiries.

2.5 Property: this is concerned with the ownership of land. Conveyancing is the term given to the process of legally transferring property. It also deals with landlord and tenant law, for instance, security of tenure, fixture of lease and rent agreements.

Lastly, there are other branches of the law of equal importance, namely Company Law, European Law and Industrial Law.

3. Law in Islamic Thought

The authority of Islamic law came, ultimately; not from the weight of the tradition or the brilliance of its casuistry, but from the divine revelation and the Community that had mediated the divine approval of the Islamic legal enterprise and underpinned the construction of its authority. Therefore, the aspect of Islamic law that most directly interacts with government is its actual application, in particular the judiciary (qada) and the public enforcement of religious norms (hisba). In this manner, the state is to be judged by its adherence to the Sharia- the source of legal as well as political norms- not the ruler, Sharia is the ultimate object of loyalty. Accordingly, any legal system that seals itself from external influence and claims to stay within the walls of its formal legal logic is likely to either be outdated or stifle its adherents.

On the other hand, the influence of the political systems and parties does not impact the Islamic law since they are solely the product of human beings and as such they are deemed to change or cease. Thus, the relationship between Islam and politics in the classical age can neither be described as a formal divorce nor a honeymoon, but rather a tenuous and instable separation of spheres of religious authority from political power that was neither justified in theory nor wholeheartedly accepted. Indeed, in Islamic law, the natural conservatism of law enhanced even further by its non-state, if not anti-state, posture since the third/ninth century. For example, the notions of clemency, forgiveness or even attenuating circumstances in any legal system are derived in Islamic law from the Koran:

"When those who believe in Our Ayat (proofs, evidences, etc) come to you, say: 'Salamun Alaikum' (peace be on you); your Lord has written Mercy for Himself, so that if any of you does evil in ignorance, and thereafter repents and does righteous deeds (by obeying Allah), then surely, He is Oft-Forgiving, Most Merciful." Surat Al-An'am 6:54.

Besides, legal systems are only a part of the civilizations to which they belong and, as such, are affected by a number of non-legal advantages and disadvantages conferred by the carrier civilization. Consequently, legal 'taqlid' was blameworthy when qualified scholars refused to see the truth of the argument of an opponent or

another school out of ego, prejudice for an authority, or school loyalty. For instance, Ibn Taymiya was essentially interested in bolstering the Mamluk State and curtailing the authority of his fellow 'ulama' in exchange for the supremacy of the Shari'a not only as law but as a font of political norms as well.

Lastly, the advocators of Islamic law put forward an argumentation which stipulates that Islamic law cannot be distorted or manipulated because of its divine source. This is due to its preservation by Allah (for the believers) in fulfilment of His words:

"Verily, We, it is We Who have sent down the Dhikr (i.e., the Koran) and surely We will guard it (from corruption)." Surat Al-Hijr 15:9.

4. Characteristics of Legal Discourse

There is an even greater interest by linguists in distinguishing the characteristics of the various genres which make up a language. Among the numerous genres that exist in language there is what is usually referred to as Specialized Discourse. Indeed, SD is concerned predominantly with the language used in professional and institutional settings, e.g. in business, hospitals, schools, universities, the courts, etc. The major distinguishing features of SD (with respect to general discourse), is its lexicon, i.e. the large number of specialized lexical items pertaining to a particular genre.

As far as the legal discourse is concerned, it is generally used by a community which is made of lawyers, judges, and all those involved in drafting laws. These are the 'insiders'. In fact, there are different types of legal discourse (sub-genres): e.g. the language used between lawyer and client or between two lawyers; the language of the courts (much of which is oral); the language of law reports and academic texts on legal matters and the language of legal documents. It is equally important to point out that the expression 'legal language' covers any sort of discourse which is concerned with legal matters (descriptive and prescriptive), whereas the expression 'the language of the law' is concerned with prescriptive legal discourse.

On the whole, the most important features of legal discourse can be summarized in the following:

4.1Archaic or rarely used words and expressions: Legal English sometimes uses archaic or rarely used words and expressions. Here are two examples. The first is the enactment passed by Westminster. The second is typical of the language of contracts.

'Be it enacted by the Queen's most Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:'

'NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound hereby, the parties hereto agree as follows:'

4.2Binomials and Trinomials: Binomials and trinomials (also known as 'strings') are particularly common in the language of contracts and wills, e.g.

"... the terms and conditions set forth in this agreement..."

'This is the last will and testament of me...'

'I give devise and bequest all my property of every nature and kind...'

"... the same may be amended, supplemented or modified in accordance with the terms hereof..."

4.3Formulaic Expressions: Legal language in general tends to use formulaic expressions, e.g.

'Do you swear to tell the truth, the whole truth, and nothing but the truth?'

'Now, therefore, the parties agree as follows:'

'I, _____, of _____ being of sound and disposing mind, do hereby make, publish and declare the following to be my Last Will and Testament...'

4.4French Words and Latinisms: Legal English sometimes contains words and expressions from Latin or French, e.g.

'The defence was that the plaintiff was not a de jure officer and that a de facto officer is not entitled to a salary.'

'If in case B a court with power to overrule case A says that case A is overrules, the ratio decidendi of case A ceases altogether to have any authority so far as the doctrine of precedent is concerned.'

'The Czech Republic shall remove trade barriers in the coal market with the acquis by accession.'

4.5Frequent Repetition of Particular Words, Expressions and Structures: There is a lot of repetition in legal texts (pronouns are only rarely used), generally to avoid ambiguity, e.g.

'Powers of Vice-Chair 11. Where (a) a member of a Board is appointed to be vice-chair either by the Assembly or under regulation 10, and (b) the chair of the Board has died or has ceased to hold office, or is unable to perform the duties of chair owing to illness, absence from England and Wales or any other cause, the vice-chair shall act as chair until a new chair is appointed or the existing chair resumes the duties of chair, as the case may be; and references to the chair in Schedule 3 shall, so

long as there is no **chair** able to perform the duties of **chair**; be taken to include references to the vice-**chair**.

4.6Long Complex Sentences with Intricate Coordination and Subordination: UN Resolutions are generally made up of one long sentence, e.g.

Resolution 2038 (2012)

'Adopted by the Security Council at its 6726th meeting, on 29 February 2012,

The Security Council,

Recalling its resolution 1966 (2010) adopted on 22 December 2010,

Having regard to Article 14, paragraph 4, of the Statute of the International Residual Mechanism for Criminal Tribunals (the Mechanism), annexed to resolution 1966 (2010),

Having considered the nomination by the Secretary-General to appoint Mr. Hassan Bubacar Jallow as Prosecutor of the Mechanism (S/2012/112),

Noting that, according to article 7, paragraph (a) of the Transitional Arrangements annexed to resolution 1966 (2010), the Prosecutor of the Mechanism may also hold the office of Prosecutor of the International Criminal Tribunal Court for Rwanda (ICTR),

Recalling that pursuant to resolution 1966 (2010) the Mechanism's branch for the ICTR shall commence functioning on 1 July 2012,

Decides to appoint Mr. Hassan Bubacar Jallow as Prosecutor of the International Residual Mechanism for Criminal Tribunals with effect from March 2012 for a term of four years.'

4.7Syntactic Discontinuities: Syntactic discontinuities are frequent in legal discourse. They interrupt the 'natural' flow of the sentence by inserting added information (bold expressions), e.g.

'If, after informing the supervisory authority concerned under subsection (3), any measures taken by the supervisory authority against the insurance undertaking are, in the opinion of the regulatory authority, not adequate and the undertaking continues to contravene this Act, the regulatory authority may, after informing the supervisory authority of its intention, apply to the High Court for such an order....'

'Developed country Members shall, **if requested by other Members**, provide copies of the documents or, **in case of voluminous documents**, summaries of the documents covered by a specific notification in English, French or Spanish.'

4.8Widespread Use of the Passive: The passive is very common in legal discourse, especially where it is not necessary to specify the agent, e.g.

'The acronym EURES shall be used exclusively for activities within EURES. It shall be illustrated by a standard logo, defined by a graphic design scheme. The logo shall be registered as a Community trade mark at the Office for Harmonisation in the Internal Market (OHIM). It may be used by the EURES members and partners.'

'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.'

4.9Impersonal Style: The language of the law tends to use a highly formal, impersonal style, always in the third person, e.g.

'No one may be subjected to slavery, servitude or forced labour.'

'Everyone has the right of access to (a) any information held by the state and (b) any information that is held by another person and that is required for the exercise or protection of any rights.'

'When a prisoner is found guilty of an infraction of the laws of this state or the rules of the department, gain-time may be forfeited according to law.'

'Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area- whether all of a country, part of a country, or all or parts of several countries- from which the product originated and to which the product is destined.'

4.10 Long Lists: Long lists can be typically found in definition provisions, e.g.

'Governmental Rule means any statute, law, treaty, rule, code, ordinance, regulation, license, permit, certificate or order of any Governmental Authority or any judgment, decree, injunction, writ, order or like action of any court or other judicial or quasi-judicial tribunal.'

'Person means an individual, corporation, limited liability company, partnership (limited, general or otherwise), association, trust, business trust, unincorporated organization, or other entity or group.'

4.11 Nominalization: Nominalization is the process by which a grammatical expression (very often a verb phrase) is turned into a noun phrase, e.g. to apply= to make an application. It is a common feature of formal language in general, for example:

'An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General.'

'No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law.'

'In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.'

5. Types of Legal Discourse

5.1 The Law of the Sea

The Law of the Sea is a mixture of customary international law and treaty law. The main conventions (or treaties) currently in force at the 1958 Geneva Conventions which deal with (i) the Territorial Sea and Contiguous Zone, (ii) the High Seas, (iii) the Continental Shelf, and (iv) a convention of lesser importance, on Fishing and the Conservation of Living Resources on the High Seas. These conventions were adopted at the first United Nations Conference on the Law of the Sea (UNCLOS i) in 1958. A second conference, UNCLOS ii, tried unsuccessfully in 1960 to agree on the width of the territorial sea. The third and the latest UN Conference, UNCLOS iii; met from 1973-1982. It produced a series of 'negotiating texts'- such as the Single Negotiating Text (SNT) and Informal Composite Negotiating Text (ICNT)- and finally, in December 1982, it adopted the United Nations Convention on the Law of the Sea (LOSC).

Sample A: 12-200 miles Exclusive Economic Zone (EEZ), within which coastal States have limited jurisdiction to prescribe and enforce laws concerning the exploitation of living and non-living resources of the sea and seabed, pollution, research, and the establishment of installations.

Sample B: Fisheries Coastal States annually determine a Total Allowable Catch (TAC) for their EEZ, fisheries, aimed at preserving the Maximum Sustainable Yield (MSY), and determine their harvesting capacity. Any surplus is to be made available to other- especially landlocked or other geographically-disadvantaged States.

5.2 International Law

The establishment of a peaceful world order implies the existence, at the international level, of standards and structures such as will ensure, between States, relations that are based on justice, equity and respect for human rights. International Law as a whole provides the bases for a standard- setting order governing not only the relations between States but also the functioning of the institutions born of the collective resolve of those States. The Charter of the United Nations, which reaffirms the principle of non-recourse to force in the settlement of disputes, constitutes its point of

departure. However, while International Law derives from several legal traditions, it is still European in inspiration.

Sample A: Legal Problems on a World-Wide Scale.

The accession to independence of vast territories has radically changed the physiognomy of the international community, which now finds itself at grips with problems that can only be tackled and solved at world level, concerning as they do:

- Armed Conflicts:
- Economic and Social Development;
- The Environment;
- The Distribution of Resources.

Sample B: Development of Law Studies.

A certain number of institutions which are international in scope play a role of prime importance in the development of the scientific study of International Law and international organizations such as:

- The Hague Academy of International Law;
- The Institute of International Law:
- The International Law Association.

Sample C: Force and International Law.

Article 2 (4), United Nations Charter:

'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.'

5.3 Criminal Law

There are four distinct stages in British criminal justice: making laws which define prohibited acts and provide for the treatment of offenders; preventing crime and enforcing the law- largely matters for the police; determining in the courts the guilt or innocence of people accused of crimes, and sentencing the guilty; and dealing with convicted offenders.

Sample A: Non-Custodial Treatment.

'Non- custodial treatment includes fines; probation; absolute or conditional discharge when the court considers there is no need to impose punishment; and 'binding over' when the offender pledges money with or without sureties, to keep the peace and be of good behaviour.'

Sample B: Remission of Sentence and Parole.

'All prisoners in Great Britain serving a sentence of more than five days, except those sentenced to life imprisonment, are eligible for remission of one-third of their sentence provided it does not reduce the sentence to less than five days.'

'Prisoners serving life sentence are also eligible for release on licence, after consideration by the Home Secretary who consults the judiciary, and on the recommendation of the appropriate Parole Board. Those released remain for the rest of their lives subject to recall at any time should the circumstances warrant.'

5.4 Human Rights Law

Sample A: Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In 1975 the General Assembly adopted, on recommendation of the Fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders, the Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment.

'Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.'

'No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment.'

'Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons.'

Conclusion

To sum up, the general principles of law recognised by civilised nations form the three law-creating processes. In fact, a principle of law must fulfil three requirements: it must be a general principle of law as distinct from a legal rule of more limited functional scope; it must be recognised by civilised nations; it must be shared by a fair number of States, and it is arguable that these must include at least the principal legal systems of the world. However, the fact that a legal principle is recognised in one's own country does not necessarily mean that it has been accepted elsewhere. Therefore, it is essential to sift carefully whether any particular legal principle is not only general but, also accepted by a representative number of systems of municipal law.

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Workshop Session

Practice One: In a medium length paragraph (up to 8 lines) discuss each of the following sayings in relationship to the notion of law:

'The Law is the true embodiment

Of everything that's excellent.

It has no kind of fault or flaw

And I, my Lords, embody the Law.'

'I know not whether Laws be right,

Or whether Laws be wrong;

All that we know who lie in goal

Is that the wall is strong.'

(The Ballad of Reading Goal, Oscar Wilde)

(The Lord Chancellor in Sir W. S. Gilbert, Iolanthe)

'Laws were like cobwebs;

Where the small flies were caught;

And the great break through.'

(Apothegms, Francis Bacon)

Practice Two: the following paragraph is written in specialized discourse (legal language); you are required to paraphrase it into basic English. The number of lines of your paraphrasing should not exceed the length of the original paragraph. **Please do not rewrite the text.**

Bail

A person taken into custody on a criminal charge must be brought before a magistrates' court as soon as practicable. He may be remanded in custody or on bail pending further proceedings by way of summary trail, preliminary hearing, and committal for trail on indictment or appeal. Release on bail may be granted by a police inspector following arrest without warrant, or by magistrates or by a High

Court judge. The powers of magistrates and judges to refuse release on bail have been curtailed by the Bail Act 1976. There is now a statutory presumption in favour of bail for an accused in custody who has not yet been convicted. He must be remanded on bail (whether or not he has applied for it) unless the court is satisfied that there is an unacceptable risk that if he were released on bail he would fail to surrender to custody or commit an offence while on bail, or interfere with witness or otherwise obstruct the course of justice. Before being admitted to bail, the person arrested may be required to produce sureties for his appearance and other relevant conditions may be imposed.

Practice Three: Indicate the most significant speech acts (such as to advise, to blame, to praise, etc) in the following legal discourse sequences:

- 1. 'After careful deliberation, we declare the accused guilty of having in the community of Saint John committed willingly the murders of George Henry and Michael Turner and Richard Smith, all killed in line of duty. As to the question of extenuating circumstances, the jury has found none of this matter. Consequently, in accordance with Article 304 of the criminal code, the offender is hereby sentenced to life imprisonment. There is no question of liberation on parole for thirty years.'
- 2. Lawyer: 'A court is only as sound as its jury, and a jury is only as sound as the men who make it. I'm confident that you gentlemen will review without passion the evidence you have heard, come to a decision, and restore this defendant to his family. In the name of God, do your duty!'
- 3. Honourable judge: 'In line with Article 16 of the criminal code, the jury has found the defendant guilty and, consequently; he is hereby sentenced to ten years imprisonment in a high security county jail. The prisoner will be eligible for parole after serving five years internment.'

Practice Four: Please indicate the characteristics of legal discourse in the following text:

Statute of the International Atomic Energy Agency

This statute was approved on October 1956 by the Conference on the Statute of the International Atomic Energy Agency, which was held at the Headquarters of the United Nations. It came into force on 29 July 1957, upon the fulfilment of the relevant provisions of paragraph E of Article XXI. The Statute has been twice amended, by application of the procedure laid down in paragraphs A and C of Article XVIII. On 31 January 1963 some amendments, proposed by the ad hoc commission, to the first sentence of paragraph A.3 of Article VI came into force. The functions of the International Atomic Energy Agency are:

To perform any operation or service useful in research on, or development or practical application of, atomic energy for peaceful purposes;

To make provision, in accordance with this Statute, for materials, services, equipment, and facilities to meet the needs of research on, and development and practical application of, atomic energy for peaceful purposes, including the production of electric power, with due consideration for the needs of the underdeveloped areas of the world;

To establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in such a way as to further any military purpose; and to apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement, or at the request of a State, to any of that State's activities in the field of atomic energy;

To establish or adopt, in consultation and, where appropriate, in collaboration with the competent organs of the United Nations and with the specialized agencies concerned, standards of safety for protection of health and minimization of danger to life and property (including such standards for labour conditions), and to provide for the application of these standards to its own operations as well as to the operations making use of materials, services, equipment, facilities, and information made available by the Agency or at its request or under its control or supervision; and to provide for the application of these standards, at the request of the parties, to operations under any bilateral or multilateral arrangement, or, at the request of a State, to any, of that State's activities in the field of atomic energy.

Note: Students are hereby informed that all the proposed tasks in the workshop sessions will be discussed, analysed and solved at the resumption of the pedagogical activities in the class with God's Will.

Good luck and God Bless,

Dr. TURQUI. B.