

A Cognitively-Based Approach to Structuring Iraqi Legislative Provisions

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1. Introduction

Every discipline is characterised by a certain jargon or technical vocabulary. According to Halliday (1978: 31-2), register, being a defining feature of a language variety, can be defined in terms of field, mode and tenor. As far as technical materials are concerned, it is field that comes to the fore as a defining feature. Field is concerned with the subject-matter which distinguishes one discipline from another. Apart from content, it is usually form represented by syntax, layout and tenor that helps the language user differentiate one register from another.

Legislative discourse is the most complex and esoteric of all forms of legal register. Bhatia (1987: 230) describes legislative genre as being "the hard core" of all the written variations of legal

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language. where every attempt is made to write not only clearly, precisely and unambiguously but also all-inclusively. In this paper we shall examine a few instances of legislative discourse in an attempt to solve the mysteries underlying this complex artefact and to answer the question why legislative discourse is written the way it is. The data are taken from the provisions of the Iraqi civil law.

2. Communicative Purpose

The general function of legislative discourse is directive, that is, to impose obligations and to confer rights. It differs from other varieties in terms of the communicative purpose it is designed to achieve and in the way it is created. For instance, in most other varieties, the author is considered to be both the originator and the writer of what he produces, whereas in legislative provisions, the draftsman is only the writer of the legislative Act, which originates from the deliberations of a Parliament in which he is absent. Likewise, in most varieties, the reader and the recipient for whom the document is meant are the same person, whereas in the case of legislative provisions, the document is meant for ordinary citizens but the real readers are lawyers and judges, who are responsible for interpreting these provisions for ordinary citizens.

The legal provisions must not be only clear, precise, and unambiguous but all- inclusive too in order to guard against any

misinterpretation. It is this very difficult "task of achieving the dual characteristics of clarity, precision and unambiguity on the one hand, and all-inclusiveness on the other hand, that makes legislative provisions what they are" (Bhatia, 1994: 138).

One of the most important functions of legal language is a performative one. Legal language carries the force of the law: the statement is the act. A person who has been pronounced guilty is guilty (whether he is or not, in reality). When a divorce is granted, two people who were previously married, are unmarried, by a set of written (and spoken) words. And, most egregious of all, when a person has been missing for years, in many jurisdictions a court can declare him or her dead, whether or not he is dead.

An ultimate goal of every legislative text, which presumes certain situations, foresees a particular manner of behaviour under certain conditions and warns against certain conflicts with law if such conditions are not satisfied, is to establish principles of social coexistence and to enable the judicial system to function in compliance with the law. To that end such a text aims at providing the reader with full information of what is to be conveyed to him by the provision of the law.

3. Types of Legislative Provision

Three types of legislative rules can be distinguished (Gunnarson, 1984: 84):

1. Action rules: Such rules can be applied to only a set of specified descriptions of cases and are mainly meant to impose duties and obligations, to give rights, to prohibit actions, to assign power to certain members or bodies of the executive or other parties, or to state the law or just the penalties imposed on specific actions. For instance:

المادة ١٣٢

يكون العقد باطلا إذا التزم المتعاقد دون سبب أو لسبب ممنوع قانونا

2. Stipulation rules: These rules define the domain of application of a particular act or any section of it as in the following example:

المادة ١٣٥

تطبق أحكام المواد (١٠٤، ١٠٥، ١٠٦، ١٠٧، ١٠٨، ١١١) من هذا القانون

3. Definition rules: They are applicable to the entire Act and are mainly meant to provide terminological explanation, as in:

المادة ١٢٨٥

الرهن التأميني، عقد به يكسب الدائن على عقار مخصص لوفاء دينه حقا

المادة ٩٥٠

الأمانة، هي المال الذي وصل إلى يد أحد بإذن من صاحبه حقيقة أو حكما،

4. The Linguistics of Legislative Discourse

In all societies, law is formulated, interpreted and enforced.

In what follows we shall present some linguistic features of

Layout: The main feature of the layout of Iraqi legislative discourse

المادة ١٩٤

١. إذا تغير المغصوب عند الغاصب فالمغصوب منه بالخيار....
٢. أما إذا غير الغاصب المال المغصوب
٣. وإذا غير الغاصب بعض أوصاف المغصوب....

المادة ٩٠٩

يجب على العامل:

- أ. أن يؤدي العمل بنفسه....
- ب. ان يراعي مقتضيات اللياقة والأدب....
- ج. أن يأنمر بأوامر رب العمل الخاصة....
- د. ان يحرص على حفظ الأشياء المسلمة إليه....
- هـ. ان يحتفظ بأسرار رب العمل الصناعية والتجارية....

Sentence length: Iraqi legislative sentences are almost complex

المادة ٧٤٢

Ⓟ على المؤجر بعد قبضه الأجر المسمى المشروط تعجيله....

المادة ٤٣٩

Ⓜ إذا انقطعت المدة المقررة لعدم سماع الدعوى....

المادة ٢٨٤

Ⓜ ومع ذلك يجوز لحابس الشيء إذا خرج الشيء من حيازته....

Cohesion: Crystal and Davy (1969: 201-2) write: Legal sentences

المادة ٧٥٧

لا يضمن المؤجر العيب إذا كان المستأجر قد اخطر به أو كان يعلم به وقت

لـ **Prepositions:** Iraqi legislative texts often use the prepositions

المادة ٦٩٥

للمدين في الدخل الدائم حق إيفاء العوض الذي تأسس عليه الدخل.....

المادة ٧٣٥

وللمؤجر أن يحدد للمستأجر أجلا معقولاً....

المادة ٧٤٢

على المؤجر بعد قبضه الأجر المسمى المشروط تعجيله أن يسلم....

Binomial expressions: Binomial expression is a sequence of two or more words or phrases belonging to the same grammatical category having some semantic relationship and joined by some syntactic device. Here are some binomials from the Iraqi legislation:

بعقد أو وصية

تنفيذ العقد أو فسخه

طبقاً للشروط ووفقاً للقواعد المقررة بالقانون

وفقاً للقانون والعدالة

Qualifications in legislative provisions

The use of qualifications is considered to be the most important characteristic of the legislative provision. Most legislative provisions bristle with qualificational insertions- within their syntactic boundaries. Let us consider the following example:

المادة ١١٥٢

إذا كان المدعي عليه قد انشأ أبنية أو غرس أشجارا في العقار المتنازع

Put in very simple words, this provision is meant to give powers to the legal subject, in this case المدعي عليه (the defendant),

Syntactic discontinuities

It is to be noted that the way the qualifications are inserted within the syntax of the legislative sentence makes legislative provisions an interesting genre. Legal draftsmen try to insert these

qualifications right next to the word they are meant to qualify in order to avoid any ambiguity which may occur, even at the cost of making their legislative sentence inelegant or even awkward. The insertion of such qualifications creates syntactic discontinuities rarely encountered in any other genre. In the following example we have a rather long qualification

المادة ٨٧٨

ليس للمقاول إذا ارتفعت أسعار المواد الأولية وأجور الأيدي العاملة ان يستند

inserted between the subject of ليس and its predicate, thus creating discontinuity within the clause of ليس .

Discontinuity can also be seen in complex prepositional phrase as in:

المادة ٧٤٢

على المؤجر بعد قبضه الأجر المسمى المشروط تعجيله أن يسلم المأجور...

Such discontinuous constituents with long qualificational insertions add considerably to the complex syntactic character of the legislative sentence and lead to serious psycholinguistic problems in the processing of such provisions.

5- Cognitive Structuring in Legislative Provisions

In this section we shall attempt at finding how the features mentioned above particularly the intervening qualifications are reflected in the cognitive structuring that is associated with the legislative provision. Significantly, the law-making involves two important aspects. The first is the main provisionary clause, by which we mean essentially two things. One, the legal subject, i.e. the person-or the party which is the subject of the provision. The second is the legal action, i.e. the nature of power or right he is given to do or prohibited from doing, that flows from the provision (Bhatia, 1994: 149- 150). But the main provisionary clause is a mere skeleton the flesh of which is provided by the nature and specification of circumstances to which the main provisionary clause applies. Crystal and Davy (1969: 203) reduce the great majority of legal sentences to a minimal formula having an underlying logical structure which says something like "if X, then Z shall be Y" or, alternatively, "if X, then Z shall do Y". The comprehensibility of a legal text is considered to be dependent on both the lexical nature of a text, the characteristic of the words that are used, and the syntactic features (Berk- Seligson, 1991:7)

One of the first analyses of legislative texts was written in 1843 by an English barrister named George Coode. His analysis is

an elementary attempt to demonstrate how language is used to fulfil certain effects in legal rules. Although it concentrates on common law legislation, Coode's analysis throws light on the basic elements of legal rules in general. To him, a piece of legislation is a means of securing a benefit to some person (s) by creating an obligation or conferring a right, privilege or power. Thus he reached the conclusion that all legal rules comprise the following four elements: Case, Condition, Legal subject and Legal action. According to Coode, the legal subject is the person on whom the obligation is imposed or on whom the right, privilege, or power is conferred. The obligation itself or the right, privilege, or power and all that the law brings about is the legal action. The case expresses the circumstances or situation in which the legal action is intended to happen, and the conditions specify what must have been done before the legal action is performed. The following is a simplified example of Coode's analysis showing the four elements in their mandatory order:

(Case) where any Quaker refuses to pay any church rates, (Condition) if any churchwarden complains thereof, (Subject) one of the next Justices of the peace (Action) may summon such Quaker.

Today, for instance, both theorists and practitioners are of the opinion that there is no grammatical difference between Coode's

case and condition and both have primarily the same function. Therefore, the two elements are now joined together in what jurists refer to as the fact- situation, which specifies the conditions under which the particular rule operates (Sarcevic, 1997: 136). As for the legal subject and legal action, these two elements constitute the statement of law prescribing the action to be taken and by whom, in the event, the conditions constituting the fact - situation are accomplished. The fact- situation is frequently formulated in the main clause so as to express the logical relation: If P1+P2, then Q (cf. Bocquet, 1994: 17). According to this formula, 4L Goode's example can be rewritten as follows:

Fact- situation	Statement of law
Where a churchwarden files a complaint against a Quaker for refusing to pay any church rates.	One of the next Justices of the peace may summon such Quaker.

Goode's definition of the legal subject has been criticized as being rigid. Firstly, there are many legal rules in which the grammatical subject is not a legal person and secondly, the person upon whom the obligation is imposed or the right, power, or privilege is conferred need not be the grammatical subject (Sarcevic, 1997: 137).

While the propositional content of the fact- situation describes the conditions under which the norm operates the normative content of the statement of law prescribes the legal action to be taken.

Despite criticism of Coode's mark, it is significant that he singled out the action as the most important element of a legal rule.

Many of the Iraqi legislative provisions can be reduced to these two elements:

Statement of law	Fact- situation	
انعقد تصرفه موقوفا على إجازة الملك	من تصرف في ملك غيره بدون أذنه	المادة ١٣٥
ضمن ما اتلف	إذا اتلف أحد مال غيره على رغم انه ماله	المادة ١٩٠
لا ينفذ إلا إذا تحقق الشرط	العقد المعلق على شرط واقف	المادة ٢٨٨
سقط الدين	إذا أبرأ الدائن المدين	المادة ٤٢٠
جاز له ان يطلب فسخ العقد أو إنقاص الأجرة	إذا غضب المأجور ولم يتمكن المستأجر من رفع يد الغاصب	المادة ٧٥٥

The fact-situation specifies the conditions in the light of which the particular judgment is passed, whereas the statement of law prescribes the legal action to be executed. It is the principal verb in

the statement of law that determines whether the legal action has the illocutionary force of commanding, prohibiting or permitting.

Harking back to Goode's four elements, although it is true that the three essential elements in the syntax of the legislative provision are the case, the legal subject and the legal action, condition is also very important, if not obligatory. However, legislative statements can and most of them have a number of qualifications, other than the case, which provide essential flesh to the skeleton. Essentially, there are three types of qualifications which have a tendency for providing three different types of information about the rule of law. The first type is preparatory qualifications which outline the description of case (s) to which the rule of law applies. The second type is operational qualifications which give additional information about the execution or operation of the rule of law. Finally, there are referential qualifications which specify the essential intertextual nature of the legislative provision. (Bhatia, 1994: 151).

Qualifications constitute an important part of the structuring of the legislative statements. In fact, most legislative provisions can be written in terms of the main provisionary clause and the attendant qualifications of various kinds, which are inserted at various syntactic openings within the structure of a sentence. To illustrate the two- part move structure, let us take a very simple example:

المادة ٩٧٢

أصحاب الفنادق والخانات والمناوي (البنسيونات) فيما يجب عليهم من عناية

In legislative provisions cognitive structuring demonstrates a characteristic interplay of the main provisionally clause and the qualifications inserted.

The example above is a clear indication of the complexity of individual qualificational insertions in the legislative genre. Moreover, it is an indication of the variety of such qualifications. In order to have a more explicit display of the structural organisation of the genre and to understand the rationale for such an organisation, let us see another version:

<u>Qualifications</u>	<u>Provisionary clause</u>
فيما يجب عليهم من عناية بحفظ الأشياء التي يأتي بها النزلاء.	أصحاب الفنادق والخانات والمناوي (البنسيونات)
فيما يتعلق بالنقود والأوراق المالية والأشياء الثمينة.	مسؤولون عن فعل كل رائح أو غاد في الفندق أو الخان أو المنوى
ما لم يكونوا قد اخذوا على عاتقهم حفظ هذه الأشياء وهم يعرفون قيمتها	غير انهم لا يكونون مسؤولين
أو يكونوا قد رفضوا دون مسوغ ان يتسلموها عهده في ذمتهم	عن تعويض يجاوز خمسين ديناراً
أو يكونوا قد تسببوا في وقوع الضرر بخطأ منهم أو من أحد تابعيهم	

Both the density and complexity of qualificational insertions serve a legal function in this genre in that each one of them answers legal questions and doubts and offers clarifications about various aspects of the main provision (Bhatia, 1994: 152).

The main function of these inserted qualifications is to make the legislative provision precise, clear, unambiguous and all-inclusive. Illustrating the complexity of qualificational insertions, we shall take our final example:

<u>Legal Function</u>	<u>Qualifications</u>	<u>Provisionary Clause</u>
Preparatory Case description	فيما يجب عليهم من عناية بحفظ الأشياء التي يأتي بها النزلاء	اصحاب الفنادق والخانات والمناوي (البنسيونات) مسؤولون عن فعل كل رائج أو غاد في الفندق أو الخان أو المنوى
Preparatory Specifying conditions	فيما يتعلق بالنقود والأوراق المالية والأشياء التمينة	غير انهم لا يكونون مسؤولين
Referential Defining scope	ما لم يكونوا قد اخذوا على عاتقهم حفظ هذه الأشياء وهم يعرفون قيمتها أو يكونوا قد رفضوا دون مسوغ ان يتسلموها عهده في نمتهم أو يكونوا قد تسببوا في وقوع الضرر بخطأ منهم أو من أحد تابعيهم.	عن تعويض يجاوز خمسين دينارا

6- Conclusion

This paper is an investigation into the Iraqi legislative language as far as the cognitive structuring is concerned. Through studying the data taken from a book on Iraqi legislative provisions, legislative statements have been seen to have a conventionalised communicative purpose shared by the practising members of the specialist community. This shared communicative purpose is reflected in the way legislative statements are written and read by the members of the community particularly in the way the linguistic resources are used in this genre. The use of complex prepositions, binomial expressions, a large number and variety of qualificational insertions make syntactic discontinuities somewhat inevitable in the legislative statements and, to a large extent, account for the discourse patterning that is typically demonstrated in such provisions.

Legislative statements can be thought to have a two- part interactive cognitive structure consisting of the main provisionary clause and the qualifications rather than the linear organisation of the moves. The analysis of cognitive structuring is interactive in the sense that the move qualifications typically interacts with several aspects of the move provisionary clause at various positions, answering a number of questions that can be legitimately asked in the context.

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The Data

القانون المدني العراقي رقم ٤٠ لسنة ١٩٥١ .

INDEX

SL:

المادة ١٣٢:

يكون العقد باطلا إذا التزم المتعاقد دون سبب أو السبب ممنوع قانونا

TL: Article 132

The contract shall be null if the contractor commits without reason for a legally forbidden reason that violates public order and morals.

SL:

المادة ١٣٥:

تطبق أحكام المواد (١٠٤، ١٠٥، ١٠٦، ١٠٧، ١١٠، ١١١) من هذا

TL: Article 135

The provisions 104,105,106,107,1 10,1 1 1 shall be applied for transporting things by river.

SL:

المادة ١٢٨٥ :

الرهن التأميني، عقد به يكسب الدائن على عقار مخصص لوفاء دينه حقا

TL: Article 1285

Insurance mortgage is a contract by means of which a creditor has the right to acquire a real property for paying the debt by which the creditor has the priority over the ordinary creditors and the following creditors in taking his right out of the price of that real property whoever acquires it.

SL:**المادة ٩٥٠ :**

الأمانة، هي المال الذي وصل إلى يد أحد بأذن من صاحبه حقيقة أو حكما، لا

TL: Article 950

Trust is the money that reaches somebody by permission of the owner really or legally not exclusively. It is either in the form of preservation contract such as deposit, within a contract such as

rented property and loaned or without contract and intention as in the case if the wind throws money in somebody's house.

SL:

المادة ١٩٤:

١. إذا تغير المغصوب عند الغاصب فالمغصوب منه بالخيار...
٢. أما إذا غير الغاصب المال المغصوب....
٣. وإذا غير الغاصب بعض أوصاف المغصوب....

TL: Article 194

- 1 -If the usurped is changed at the usurper; the usurped is free..
- 2 -If the usurper changed the usurped money. . .
- 3 -If the usurper changed some of the specifications of the usurped. . .

SL:

المادة ٩٠٩:

يجب على العامل:

- أ. أن يؤدي العمل بنفسه...
- ب. أن يراعي مقتضيات اللياقة والأدب....
- ج. أن ياتمر بأوامر رب العمل الخاصة...
- د. أن يحرص على حفظ الأشياء المسلمة إليه....
- هـ. أن يحتفظ بأسرار رب العمل الصناعية والتجارية....

TL: Article 909

The worker must:

- a- perform the work by himself.
- b- cater for the exigencies of decency and morals.
- c- comply with the orders of the employer.
- d- preserve the things entrusted with him.
- e- keep the commercial and industrial secrets of the employer.

SL:

المادة ٧٤٢:

على المؤجر بعد قبضه الأجر المسمى المشروط تعجيله....

TL: Article 742:

The lessor shall, after he received the nominated rent to be paid in advance,...

SL:

المادة ٤٣٩:

إذا انقطعت المدة المقررة لعدم سماع الدعوى....

TL: Article 439:

If the time specified discontinued for not hearing the lawsuit.

SL:

المادة ٢٨٤:

ومع ذلك يجوز لحابس الشيء إذا خرج الشيء من حيازته....

TL: Article 284:

However, the possessor may, if the thing goes out of his possession.

SL:

المادة ٧٥٧:

لا يضمن المؤجر العيب إذا كان المستأجر قد أخطر به أو كان يعلم به وقت

TL: Article 757

The lessor shall not give the title insurance if the lessee was not notified of it or knew it at the time of contracting. Also, the lessor shall not give title insurance if it was easy for the lessor to find it, except that the lessor declared the possession to have no defects.

المادة ٦٩٥:

للدين في الدخل الدائم حق إيفاء العوض الذي تأسس عليه الدخل...

TL:Article 695

The debtor in the permanent income shall have the right of paying compensation on which the income was based.....

SL:

المادة ٧٣٥:

والمؤجر أن يحدد للمستأجر أجلا معقولاً.

TL: Article 735

The lessor shall fix a reasonable period for the lessee.

SL:

بعقد أو وصية.

TL:

By a contract or will.

SL:

تنفيذ العقد أو فسخه

TL:

To fulfil a contract or rescind it.

SL:

طبقاً "للشروط ووفقاً" للقواعد المقررة بالقانون.

TL:

In accordance with the conditions and the rules determined by law.

SL:

وفقاً للقانون والعدالة.

TL:

In accordance with the law and justice.

SL:

إذا كان المدعي عليه قد أنشأ أبنية أو غرس أشجاراً في العقار المتنازع فيه

TL: Article 1152:

If the defendant had established buildings or planted trees in the conflicting real property before he was forbidden, he should have the right to claim the buildings and the trees with the real property till it is settled in an ownership action provided that he proffers sufficient warrants for plaintiff in case he undergoes damage if the defendant did not prove his ownership, and provided he brings an ownership action a month from the date of his proffering the warrants. If he did not proffer the said warrants or

delayed the ownership action he would hand the real property with the alterations to the plaintiff, otherwise he would be sued.

SL:

المادة ٨٧٨:

ليس للمقاول إذا ارتفعت أسعار المواد الأولية أجور الأيدي العاملة أن يستند

TL: Article 878

The contractor shall not, if the prices of the raw material and labour wages rose, depend on that to demand an increase in the wages.

SL:

المادة ١٣٥:

من تصرف في ملك غيره بدون إذنه انعقد تصرفه موقوفاً على إجازة المالك.

TL: Article 135

Whoever disposes of somebody's property without his/her permission, his disposition shall be devolve on the leave of the owner.

SL:

المادة ١٩٠:

إذا اتلف أحد مال غيره رغم أنه ماله ضمن ما اتلف.

TL: Article 190

If someone damages someone else's money though his shall be secure what it is damaged.

SL:

المادة ٢٨٨ :

العقد المعلق على شروط واقف لا ينفذ إلا إذا تحقق الشرط.

TL: Article 288

The conditional contract shall be null unless the condition is achieved.

SL:

المادة ٤٢٠ :

إذا أبرأ الدائن المدين سقط الدين.

TL: Article 420

If the creditor acquitted the debtor, the debt shall be dropped.

SL:

المادة ٧٥٥ :

إذا غضب المأجور ولم يتمكن المستأجر من رفع يد الغاصب جاز له أن

TL: Article 755

If the rented property was usurped and the lessee was not able to stop the usurper, he may demand to rescind the contract or decrease the rent.

SL:

المادة ٩٧٢ :

أصحاب الفنادق والخانات والمأوي (البنسيونات) فيما يجب عليهم من عناية

TL: Article 972

The owners of hotels, inns and shelters (board and lodging) who have to take care of the things belonging to the customers are responsible for every act in the hotel, inn or shelter. However, they shall not be held responsible as regards money, financial documents and precious things for compensating what exceeds 50 dinars unless they were held responsible for keeping these things and they knew their value or they refused without any reason to be entrusted with them or they caused damage by mistake on their part or on the part of one of their fellows.

ملخص

منحى ادراكي لدراسة بنية الاحكام التشريعية العراقية

زهير غانم فرحان (*)

و مازن فوزي احمد (**)

هذا البحث دراسة في البنية الإدارية للنصوص التشريعية العراقية. فالنصوص

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