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TEXTUAL FEATURES OF LEGAL TEXTS IN THE DOMAIN OF COMMERCIAL LAW

Abstract: The contribution discusses the characteristics of English legal texts in the context of their communicative function which is manifested by their illocutionary force grounded in their textual structure. The aim here is to verify the thesis that there is a significant degree of structural similarity in legal texts belonging to the same legal genre, which is reflected in the specific layout of the texts, their repetitive structures and recurring linguistic expressions. From the point of view of pragmatics the specific textual features of the texts making up the corpus make it possible to identify legal speech acts which carry illocutionary force referring the performative aspect of legal communication. The said illocutionary acts operate within the text or, more specifically, within its various parts which are discussed in the context of the felicity conditions and grammatical markers of the speech acts. The discussion is based on examples extracted from a corpus made up of authentic texts in the domain of commercial law.

Key words: illocutionary force, performatives, legal speech acts, communicative function.

Introductory remarks

Any discussion on the text features of an utterance from the textual standpoint revolves around the identification of the various purposes of the texts and the identification of the formal linguistic properties which distinguish one type of text from another (Gotti 2005:128, Kortmann 2005:230-235, Trask 1999). Reference is made to the seven standards of textuality¹ and the discussion on the specific formal features of the text which are believed to serve the purpose of fulfilling the communicative and pragmatic purpose of the given text, as a whole.

¹ The seven standards of textuality are: 1. cohesion, 4. acceptability, 2. coherence, 5. informativity, 3. intentionality, 6. situationality, 7. intertextuality (De Beaugrande and Dressler 1981).

The communicative potential of an utterance/text is often discussed with reference to its illocutionary force² which is defined as ‘[...] communicative function of an utterance being uttered in a specific context’ (Jopek-Bosiacka 2010:158).

As regards the language of law the notion of the illocutionary meaning assigned to a text or a part of it relates to the performative function of the language which – in turn – relates to performing a specific action, instead of simply describing or stating facts about the world. In other words, performativity is about the instances of the language use where an utterance makes things happen; in our case, it leads to the enactment of law, to the production of the intended legal effect (Cao 2007:114, Jopek-Bosiacka 2010:158-159, Šarčević, 1997:246-147, Witczak-Plisiecka 2007:35-36).

A text analysed in the context of its *illocutionary value* is referred to as an *illocutionary act* (Jopek-Bosiacka 2010:159). On the grounds of the language of law the term *illocutionary act* is often understood in a somewhat narrowed sense and it is held as equivalent to the term *performative* (utterance) and *legal speech act* (Jopek-Bosiacka 2010:158-159, Mróz, Niewiadomski, Pawelec 2009:21-22, Williams 2005:53-62, Witczak-Plisiecka 2007:132), since in the field of legal language *performativity* is said to be the dominant illocutionary value of the texts or parts of the texts and these may be assumed to correspond to the various categories of speech acts.

To account for the inclusion of performatives in the textual features the following statement needs to be made. The illocutionary dimension of an utterance in the case of general, legal text is something that exceeds the structural limits of a single sentence and it is the fulfillment of the text-linguistic and extralinguistic conditions which makes the performatives operative by releasing the illocutionary force of the text or parts of the text.

Data and general methodological considerations

The analysis was conducted on the basis of a corpus made up of a variety of texts on file at one of the divisions of *the National Court Register* in Poland. These include instances of memorandum of associations, articles of associations, certificates of incorporation, certificates on a change of name and resolutions of

² The notion of illocution was coined by Austin (1962) in order to distinguish between the various facets of the meaning of an utterance. *Locutionary act* is said to correspond to the cognitive meaning of an utterance, whereas *illocutionary act* refers to the meaning in context and finally *perlocutionary act* concerns the effect of the action or the potential fulfillment of the action (Witczak-Plisiecka 2007:36). This terminology is related to the distinction between *performative* and *constative* utterances and makes up part of the *speech acts theory* initiated by Austin (1962).

shareholders. Cases of performatives were found in all these types of documents but the scope of the present study does not allow for a wide-ranging discussion in relation to the numerous legal genres on file. Thus, the author limited herself to the certificates referring to the relevant theoretical assumptions according to which specific types of certificates present relevant data for analysis in relation to the speech act theory.³

The search of the corpus data revealed that certificates do not constitute a homogenous genre as regards the illocutionary force of the message included therein. Notably, some certificates may be considered as ‘conventional and not communicative acts’ (Witczak-Plisieceka 2007:110) and they do not lead to any change in the extra-linguistic reality. More specifically, the physical and legal status of items is the same at the beginning and at the end of the performance. Following this line of reasoning, the author excluded the certificates which do not confer rights, but merely certify the fact these were conferred. It is assumed for the purpose of the analysis that this group of certificates may not be said to be ‘embodiments of typical speech acts in the original Austinian sense [...]’ (Witczak-Plisieceka 2007:111).

Following this criterion related to a change in the extra-linguistic reality, the author narrowed the language material analysed to certificates of incorporation and certificates on a change of company name issued by *the Companies House*. Furthermore, the said language data used for the analysis were limited to those where the principle of temporal contiguity was noted, i.e. the date of the linguistic performance is congruent with the date of the arising of specific legal rights, which allows for the assumption that the said legal speech act leads to a change in the extra-linguistic world.⁴ Additionally, it is assumed that in the context of the communication channel, as we have in the case of the said types of certificates, the speech acts in question serve the illocutionary function in that they have a performative effect towards the Recipient/Hearer for whom the said documents communicate primarily the change in his legal status.

From the linguistic perspective the illocutionary aspect of the legal texts (*legal speech acts/illocutionary acts*), or to be more specific their performativity, lends itself to discussion – as was already hinted upon – on the grounds of the speech act theory, where 1. speech acts are discussed in the context of the textual and circumstantial conditionings which need to be satisfied to make the speech act operative (*felicity conditions*), and 2. reference is made to specific types of speech acts, as distinguished in non-specialist and specialist languages. Thus, before

³ For example, Witczak-Plisieceka (2007) considers certificates as communicating specific speech acts. Notably, the scholar limited herself to the analysis of school, birth and marriage certificates. This discussion is intended to provide a domain-specific insight into the phenomenon of performatives as used in commercial law texts and thus complement the research carried out in the field so far.

⁴ The author excluded the certificates of incorporation which were issued post-factum in that they just confirm the change in the legal status which occurred earlier.

embarking on a discussion related to the textual features of the legal texts related to their illocutionary force let us introduce some of the basic tenets of speech act theory which will provide some theoretical ground for the analysis that follows.

Referring to the first point, as was already noted above, the operative force of a given legal speech act, also referred to as an illocutionary act, rests not only on the wording of the specific performative phrase, but it is conditioned by a number of extralinguistic conditions known as *felicity conditions*. The term *felicity conditions* was coined by Austin (1962) who used it to indicate the distinctiveness of *performatives* being qualified as felicitous or infelicitous as opposed to *constatives* which may be true or false. The concept of felicity conditions was further developed by Searle (1991) who is widely quoted and referred to in the literature of the subject (Witczak-Plisiecka 2007:34). Thus, contemporarily, most scholars refer to felicity conditions as circumstantial properties which can be broken down into the following points:

1. the propositional content conditions, which means that the given utterance has meaningful information,
2. the preparatory conditions, which implies that specific circumstances need to be present to allow the act to be performed,
3. the sincerity conditions, referring to the speaker's sincere and serious attitude,
4. the essential conditions, relating to what is referred to as accepted relevant social conventions (Witczak-Plisiecka 2007:36).

In the foregoing the author will test the language material extracted from the corpus against the linguistic conditions that need to be fulfilled in order to make a specific performative utterance operative. The relevant syntactic markers as formulated by Austin (1962) are widely quoted in the literature on the subject (Witczak-Plisiecka 2007:36):

1. the subject is in the first person,
2. the verb is in the simple present tense,
3. the indirect object, if at all present, is 'you',
4. it is possible to insert the adverb 'hereby',
5. the sentence is not negative.

The language material discussed in the analytical part of the paper refers to the taxonomy of speech acts as developed by Austin (1962) and Searle (1991).

The classes of speech acts as distinguished by Austin (1962) include *verdictives*, *exercitives*, *commissives*, *behabitives* and *expositives*. The distinctive feature of each class of speech acts refers to the function of a text or part of it. Hence verdictives are about giving opinions, exercitives relate to demonstrating the authority of a speaker/performer, commissives concern commitments, behabitives – social behaviour, and – finally – expositives are defined as demonstrations of the

speaker's beliefs (Mróz, Niewiadomski, Pawelec 2009:21-22, Witczak-Plisiecka 2007:46). The taxonomy of speech acts by Searle (1991) serves as a reference framework for most of the discussions related to the speech acts since it is said to offer 'most influential insight into the nature of illocutions' (Witczak-Plisiecka 2007:48).

Searle (1991) distinguishes the following speech acts: *representatives* (or *assertives*), *directives*, *commissives*, *expressives*, *declarations*. Representatives express the belief of the performer that they are stating the truth and thus commit the speaker to the truth of the message.

Directives and commissives are about the activity related to the influence of the act on the speaker. Thus directives are aimed at making the addressee perform specific action, while commissives 'commit the speaker to something' as Witczak-Plisiecka (2007:49) quotes after Searle (1991), in that they refer to as vowing, swearing, promising to conduct an act in law. The fourth class of speech acts as distinguished by Searle (1991) – expressives – refer to revealing various psychological states related to, for example, thanking or apologising.

Declarations embody highly institutionalised speech acts enacted by using the specific conventional linguistic formulae which refer to an act in law such as dismissing from work, appointing or baptizing.

The case study of commercial law certificates

It has already been stated that certificates of the type covered by the analysis provide transparent data for a discussion related to speech act theory. The illocutionary act in the case of the certificates in point refers to conferring rights, namely awarding rights to a commercial law entity, which is conditioned by incorporation of a company into the relevant register after this has been established by the drawing up of relevant documents (articles of association and memorandum of association).

Certificates contain expressions which constitute a frame for the message communicated with the implication of its performative function. If we hold the said text as an instance of a communicative act (Witczak-Plisiecka 2007:106) we may assume that 'the communication channel' may be equaled with the conventional Speaker/Hearer relation. In our case the name of the institution (signatures, authorisation, information on the communication means, the institution where the official is employed) corresponds to the Speaker, while the Company that is being entered into the said register may be considered as the Hearer, since the certificate is conventionally issued upon the request of the Company, thus they are the recipients of the said communicative act. The speech act communicated by the certificate may thus be presented as having the following units: (1) the title of the document, (2) the name of the recipient, i.e. the company on file with a specific number in the

register, (3) the authorisation, i.e. information on the official who communicates the change in the extra-linguistic world, (4) the performative phrase with the ‘idiosyncratic content’, i.e. the content which varies depending on the legal form of the company and its situation, (5) the name of the institution which issues the document and – from the linguistic point of view – releases the specific speech act. To make the illustration more transparent, the relevant sections of the sample document below are marked with numbers. Notably, number (3), corresponding to the authority issuing the certificate, recurs throughout the document, with the various elements revealing new facts about the authorisation, i.e. position of the official (3’), name of the institution employing them (3’’) and official seal of the office (3’’’). The conventionality of the form of certificates is also reflected in the layout of the documents, which follows the typical communicative act structure, as illustrated by the following example:

(1) *CERTIFICATE OF INCORPORATION OF A PRIVATE LIMITED COMPANY*

(2) *COMPANY NUMBER XXX⁵*

(3’) *The Registrar of Companies for England and Wales, (4) hereby certifies that xxx is this day incorporated under the Companies Act 2006 as a private company, that the company is limited by shares, and the situation of its registered office is in England and Wales.*

(5) *Given at Companies House, Cardiff, in xxx.*

[in the footnote]

(3’’) *The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of Companies Act 2006.*

[to the right]

(3’’’) *The official seal of the Registrar of Companies*

[to the left – the logo of the institution and the following inscription below]

Companies House

The contents of the certificate show that the felicity conditions as formulated by Searle (1991) seem to be successfully completed and consequently the legal speech act may be said to be operative i.e. the legal consequences stipulated in the documents become a fact, which means that the company is incorporated in the register referred to as Companies House as a private limited company with a registered office as specified. The act of incorporation means that the company acquires legal personality and its managements, liability and the ways of representation are defined in specific regulations (*Companies Act 2006*). To start with, the first condition referred to as the *propositional content condition*

⁵ The x’s stand for confidential data related to the company.

is fulfilled in that the message communicated emerges from the wording used in the certificate. Hence, the performative verb accompanied by the adverb *hereby* clearly signifies the emergence of the new status which is introduced by the act of incorporation. The illocutionary force of the performative is strengthened by the recurrent use of the term *incorporate* throughout the document (also in its nominal form *incorporation*) on the grounds of intertextual link. Namely, the said term is used in the relevant legal act and its meaning is unequivocal as regards the legal consequences in the domain of commercial law.

The second felicity condition, that is *the preparatory condition* as Searle (1991) puts it means that the person who makes the utterance, or – in our case formulated the text – must be authorised to do so (Malinowski 2006:97). In our case the illocutionary act is introduced by a principal who writes a statement introducing the new legal state and thus awards rights. The authorisation which is stipulated in the preparatory condition is made linguistically explicit by the inclusion of the denotation of the position of the person authorised, i.e. Registrar of Companies for England and Wales, and additionally by reference to the institution that is responsible for keeping the relevant records on file.

Furthermore, the third felicity condition, i.e. *the sincerity condition*, for such a certificate to be valid is the belief on the part of the performer that they are stating the truth, which is strengthened by the reference to the legal provisions, i.e. the Companies Act.

The *essential condition* is fulfilled in that the performer has the intention to inform the receiver of the illocutionary force of the utterance and this is done in line with the social conventions accepted in this type of communication. Namely, the text fits into the conventional layout and contents of the information which refers to the legal form, the fact of being incorporated and the situation of the registered office.

A closer analysis of the performative sentence within the document in question reveals that it has the essential grammatical features that are typical for a performative according to Austin's (1962) theory. Hence, the sentence is not negative and it is in the simple present tense. Furthermore, the use of the adverb *hereby* is a typical feature of performative sentences (Witczak-Plisiecka 2007:107, Jopek-Bosiacka 2010:159). The text-mapping adverbials, as Gotti (2005:106) calls them after Bhatia (1987), serve the purpose of referring to the part of text, in our case it is the sentence conveying the illocutionary meaning, and thus emphasise the words that have the performative function, excluding the possibility of erroneous interpretation.

It needs to be added that the grammatical structure of the performative sentence does not follow the canonical formula, as postulated by Austin (1962) and presented in the previous part of this paper (i.e. first person subject, *you* as indirect object, simple present active). The possible variations in this respect were later on accepted by Austin Jopek-Bosiacka (2010:159) and sustained in the literature of the subject. For example, Jopek-Bosiacka (2010:159) and Witczak-Plisiecka (2007:106)

accounted for the use of passive constructions in performative sentences. Moreover, the examples discussed by the scholars include cases of deviation from the subject in the first person (Witczak-Plisiecka 2007:107).⁶ Hence, the sentence extracted from the model *The Registrar of Companies for England and Wales*, (4) hereby certifies that ... clearly fits the pattern.

The speech act extends beyond the single sentence and its performative force emerges from the whole text, in our case the certificate which in the context of our discussion constitutes the basic unit of communication. Following this line of reasoning and pointing to the textual dimension of the performatives in the language of law, a remark needs to be made about the linguistic mechanisms that increase the cohesion of the text and thus improve the transparency of the illocutionary force of the utterance. The language materials presented is illustrative of – what Gotti (2005:104) calls – ‘excessive recourse to lexical repetition’, which clearly eliminates the risk of ambiguous interpretation. The case in point is the repetition of the term *company* instead of employing pronouns or synonymous terms.

The short overview of the structure of the sample text, discussed in the context of the circumstantial conditions and the grammatical form, encourages us to claim that the certificates discussed in the paper embody the typical speech acts in the Austin’s sense and they can be fitted into Austin’s (1962) and Searle’s (1991) taxonomy of speech acts.

Referring to Austin’s (1962) taxonomy of speech acts it may be assumed that the said certificates fit into the category of *Exercitives* since they present a case of the exercising of power by officials acting in the capacity of Registrars of Companies.

If we abandon the agent-oriented standpoint and assume the subject matter perspective focusing on the outcome of the performative, we are clearly able to classify the said type of certificates to Searle’s (1991) class of *Declarations*, since they trigger a change in the extralinguistic world which consists of granting specific rights to the company, which become effective in the moment of its incorporation.

Conclusions

The discussion presented above points to the complexity and special character of communication in the domain of law. The texts are not only intended to provide description or state facts but they also have performative force which specifies their illocutionary orientation and fulfills the communicative function of the given legal text, which is – predominantly – to produce legal effect.

⁶ Compare the use of subject in the third person singular included in the example quoted in Witczak-Plisiecka (2007:107), i.e. *Upon the recommendation of the Board of ... hereby confers upon ... the degree ...* .

It emerges from the discussion that the illocutionary meaning typical of the specific domain of law and type of legal text becomes operative by meeting specific formal requirements on the textual level. Achieving the specific communicative effect by conveying the specific illocutionary value does not only rest upon employing specific language formulae. It exceeds the border of a sentence and it is conditioned by some supra-sentence text features ensuring text cohesion and coherence, which strengthens the illocutionary force of a text. From the point of view of text linguistics, the specific, rigid, fossilised form of a text with its deviations from the accepted, stylistic conventions (archaic forms, lexical repetition) or domain-specific linguistic structures (e.g. use of pro-forms) seem to serve the higher, communicative purpose. The quotation from Gotti (2005:108) who comments upon the length of specialized texts seems to be an accurate conclusion here: 'Textualisation is subservient to pragmatic requirements, as the need to ensure a single clear-cut interpretation prevails over text length' (Gotti 2005:108).

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