

Volume 1/2009

Comparative Legilinguistics

International Journal for Legal
Communication



Institute of Linguistics
Adam Mickiewicz University
Poznań, Poland

INSTITUTE OF LINGUISTICS
LABORATORY OF LEGILINGUISTICS
www.lingualegis.amu.edu.pl lingua.legis@gmail.com

KOMITET REDAKCYJNY/EDITORIAL BOARD

Editor-in-chief: Jerzy Bańcerowski

Co-editor: Aleksandra Matulewska

Sekretarze/Assistants: Karolina Gortych, Joanna Grzybek, Karolina Kaczmarek,

Paweł Korcz, Joanna Nowak, Paulina Nowak-Korcz

Członkowie/Members: Łucja Biel, Susan Blackwell, Olga Burukina, Artur Kubacki,

Peter Sandrini, Iwona Witczak-Plisiecka, Feliks Zedler

Comparative Legilinguistics ukazuje się raz w roku. Zamieszcza artykuły, recenzje, sprawozdania w językach: angielskim, francuskim, niemieckim i rosyjskim.

Redakcja zastrzega sobie prawo recenzowania nadsyłanych materiałów.

Comparative Legilinguistics is published once a year. It contains articles, reviews and reports in English, French, German and Russian.

The editorial board reserves the right to publish selected articles without external review.

Adres Redakcji/Editorial Office

Instytut Językoznawstwa

Pracownia Legilingwistyki

Al. Niepodległości 4, pok. 218B

61-874 Poznań, Poland

legilinguistics@gmail.com

Wydanie publikacji dofinansował Instytut Językoznawstwa

The issue has been published with financial grant from the Institute of Linguistics, Poland.

Copyright by Institute of Linguistics

Printed in Poland

ISBN ...

ISSN ...

Nakład Egz.

Redakcja i skład

Druk:

TABLE OF CONTENTS

ARTICLES

1. Forensic Linguistics and Linguistic Corpora

- Susan BLACKWELL (UK), Why Forensic Linguistics Needs Corpus Linguistics 5

2. Linguistic Rights and Legal Communication

- Milena HADRYAN (Poland), Achievements of the Plain Swedish Movement from the Polish Perspective 19
- Peter SANDRINI (Austria), The Parameters of Multilingual Legal Communication in a Globalized World . 34

3. Sworn Translation and Court Interpreting

- Marcin STYSZYŃSKI (Poland), Arabic in Certified Translators' Work 49
- Niklas TORSTENSTON, Barbara GAWROŃSKA (Sweden), Discourse Disfluencies in Bilingual Court Hearings 60

4. Legal Language

- Karen DESCHAMPS, Hans SMESSAERT (Belgium), The Logical-Semantic Structure of Legislative Sentences 73
- Karolina KACZMAREK (Poland), Interpretation of Legal Texts by Translators. Imperative, Prohibitive and Empowering Clauses in Polish, Hungarian and English Legal Language 88
- Jana LEVICKA (Slovakia) Analysis of 'Classical' and Legislative Definitions for the Term Records of the Slovak Terminology Database 107
- Merike RISTIKIVI (Estonia), Latin Legal Terminology in Estonia 123
- Aleksandra MATULEWSKA (Poland), Methods of Expressing Deontic Modality in English and Polish Statutory Instruments 133
- Wanda WAKUŁA-KUNZ (Poland), Cognitive Consequences of Translations for Rendering the Modality of Legal Documents (A Semantic Study Based on The Amsterdam Treaty as an Example) 146
- Iwona WITCZAK-PLISIECKA (Poland), Legal Speech Acts in a Cognitive Linguistic Perspective – Focus on Modality 159

5. Legal Translation

Łucja BIEL (Poland), Organisation of Background Knowledge Structures in Legal Language and Related Translation Problems	176
Karolina GORTYCH (Poland), The Function of Ancient Greek in Teaching Legal Translation of Modern Greek Language.	190
Joanna GRZYBEK (Poland), Polysemy, Homonymy and Other Sources of Ambiguity in the Language of Chinese Contracts	207
Marcin MICHAŁSKI (Poland), Legal Themes in the Maqamas of AL-ḤARĪRĪ (1054 – 1122)	216
Diana YANKOVA (Bulgaria) Translation Approaches in a Multilingual and Plurilegal Setting: Canada and the EU	230

REVIEWS

Łucja BIEL (Poland), The Long-Felt Need of a Legal Translation Textbook: Review of PRZEKŁAD PRAWNY I SĄDOWY by Anna Jopek-Bosiacka	
--	--

Iwona Witczak-Plisiecka¹

LEGAL SPEECH ACTS IN A COGNITIVE LINGUISTIC PERSPECTIVE – FOCUS ON MODALITY

ABSTRACT: The paper involves three main fields of linguistic analysis: the pragmatic theory of speech acts, cognitive linguistics and legal language. Its main aim is to demonstrate the relevance of the cognitive framework to the analysis of speech acts and especially the deontic use of the modal verb *shall* in the legal context. The focus is on the use of the modal, which is mainly used to impose obligations or to confer rights. Thus, its meaning seems to be in most cases a combination of both assertive and directive illocutionary forces when approached from a pragmatic perspective, and a combination of deonticity with futurity and prediction in traditional grammar terminology. The discussion is illustrated with a variety of examples retrieved from a corpus of legal documents drafted in English and translated into Polish.

It is argued that the meaning of most instances of *shall* in the legal domain, due to its context-sensitivity, can be best accounted for in terms of a cognitive blend, which integrates various aspects of its meaning. These aspects are believed to be inherently vague and possibly an instance of ongoing processes of grammaticalisation, which can only be grasped with reference to the context of a particular expression, thus pragmatic in nature.

KEY WORDS: legal language, cognitive linguistics, modality.

1. Introduction

The present paper comments on selected aspects of speech acts in the legal context and their theoretical linguistic account in both what can be recognized as a traditional view and a newer cognitive linguistics. The traditional approach is primarily associated with the speech act theory as introduced and developed by John L. Austin (1962), John

¹ Katedra Językoznawstwa Angielskiego i Ogólnego, Uniwersytet Łódzki, Al. Kościuszki 65, 90-514 Łódź, wipiw@uni.lodz.pl

Searle (1969) and their followers. The cognitive approach adopted for the present study refers to work of Ronald Langacker (1983, 1999), Gilles Fauconnier (1985, 1999), Mark Turner (eg. Fauconnier and Turner 1996) and Eve Sweetser (1990, 1999). It follows from the very nature of a speech act, which involves performative, operative values, that the theory places itself in the center of pragmatic analyses, and although, as it has been emphasized by Roman Kalisz (2001: 13), pragmatic theories are basically sociolinguistics, while cognitive studies are psychologicistic in nature, it seems fruitful to try and integrate the two methodological perspective, which, it is believed, may result in a better description of language phenomena. It is also worth noting that there are new linguistic theories, not associated with the cognitive approach but built within the philosophy of language, which indicate that speech act theory must inherently be psychologicistic (cf. Barker 2004)².

In the present study the cognitive approach to legal speech acts is illustrated via the account of the deontic *shall*, which is recognized as one of the characteristics of legal register. The semantics of the deontic *shall* is approached in terms of a cognitive blend.

2. Speech act theory and linguistic pragmatics.

Despite the ubiquity of the term – pragmatics, the theoretical status and scope of linguistic pragmatics has not been sufficiently defined. Most often pragmatics is understood as a layer of linguistic analysis next to other such layers, e.g. phonetics, phonology, syntax, semantics, etc. (cf. Akmajian et al. 2001, Kalisz 2001). Pragmatics understood in this way is the study of meaning beyond semantics, i.e. the study of meaning in context. The most often quoted features which are to differentiate pragmatics from semantics include departure from truth-oriented analysis, and focus on notions such as possible worlds, speech acts, linguistic implicature, politeness, language deixis, i.e. phenomena which may not be readily accessible though reference to language as a (relatively well defined) code, but rather available via inference³. There are also

² In his book „*Renewing Meaning: A Speech Act Theoretic Approach*” Barker (2004: 221) claims that the theory of speech acts is ‘wedded to psychologism’.

³ It is significant that linguistic pragmatics includes research into the question of explicitness of lin-

pragmatic researchers who claim that pragmatics is not yet another layer of linguistic analysis, but a holistic approach to research in language (e.g. Verschueren 1999). Verschueren (1999) points to the fact that all linguistic phenomena, on all traditional layers (i.e. phonetics, syntax, etc.) can be analysed ‘pragmatically’, i.e. from a linguistic pragmatic perspective; another problem is whether these traditional layers are at least methodologically justifiable. It is evident that language is not simply composed of structured layers and their presence can only be accepted as useful generalization which are to facilitate research and point to the most salient aspects of a particular approach. However, it can never be justified that e.g. syntax can be sufficiently accounted for without reference to other aspects of language, most prominently meaning. On the other hand more restrictive approaches which entirely reject structuring linguistic research into the traditional layers have to cope with generality and all-inclusiveness and may appear methodologically vague even though they are able to avoid many problems connected with borderline categories, and seem to be closer to people’s everyday experience, where the world is seen as imperfect and saturated with ‘folk’ definitions. The extreme view on language as non-autonomous and semantically dynamic, and on linguistics which require immediate demythologization, can be seen in the ‘sociologistic’ integrational linguistics (cf. Harris 1988, Toolan 1996), a more moderate view, where language is also seen as non-autonomous, but dependent on human cognitive abilities, is the more ‘psychologistic’ cognitive linguistics⁴.

It seems common sense solution to accept that language cannot be analysed with no reference to the context of its use. Much as it is not possible to think of language out of its social context, the speech act theory introduces a very special methodology, which embraces the effects of linguistic performance. This field of study, whose origin is marked with focus on performative, operational utterances, i.e. the language in (and of) action, the language which is not just descriptive, seems to be especially relevant to the study of legal language.

guistic expressions and the implicit-explicit relation (cf. research done within the relevance-theoretic framework by Robyn Carston and Diane Blakemore, e.g. Carston 2002, Blakemore 1989), which however falls beyond the scope of the present essay.

⁴ It should be noted however that some integrational linguistic notions are not compatible with the commitments of the cognitive approach.

Legal language forms a very unique sub-system of natural language, because law, unlike other fields, e.g. engineering, medicine, is both expressed and performed via linguistic expressions. In fact it is not possible, at least in the European tradition, to think of law which is not formulated in language.

3. Speech acts in theory and their methodological status

The multidimensionality and complexity of speech acts have already been asserted by John L. Austin, who systematically introduced the theory into the philosophy of language. Austin (1962) pointed to the fact that there is no characteristic form for a speech act, one which could be successfully formalized; he also emphasized that linguistic acts may be unsuccessful for a great number of reasons. Searle (1969) suggested constitutive and regulative rules, which were more formalized and provided a more detailed, but also methodologically generalized, description of the conditions for successful accomplishment of linguistic acts.

The notion of the speech act itself has undergone significant evolution since the 1960s, especially with regard its recognition as a primary unit of meaning. As has been indicated above, Austin (1962) claimed that linguistic acts can be performed in a variety of ways despite indicating the most prototypical performative form in which they occur, i.e. the present simple first person indicative mood with the use of an explicit performative verb preceded with the adverb *hereby*. Thus, even Austin asserted that there is no direct, natural correspondence between form and function, which allows us to recognize and discuss speech acts on suprasentential level. This understanding is in agreement with a number of newer approaches, e.g. that of illocutionary logic proposed by Vanderveken and Searle (Vanderveken 1990, 1991, 1994; Searle and Vanderveken 1985) or the account of meaning suggested by Stephen Barker (2004). In both these approaches speech acts are treated as primary units of meaning although while Vanderveken and Searle recognize six main categories of speech acts, Barker is in favour of their indefinite number, which is to reflect the mereology found in natural world. Barker's methodology brings him closer to the cognitive approach via his focus on intention and form, at the same time reviving notions related to the well known and somewhat

obsolete performative hypothesis rooted in generative grammar⁵ (cf. Ross 1970, Sadock 1974).

With regard legal language, and especially the language of English normative documents, it is common to recognize speech act-oriented units of meaning at various levels of legal discourse. These units are recognized at various levels of e.g. a statute, a will, a contract. There is ample discussion in literature of macro-acts and micro-acts, macro-structures and micro-structures, speech events and internal lower-rank acts⁶, which can be found in legal documents. It seems significant that ‘*event*’ is also one of central technical terms in cognitive linguistics.

Technical methodological problems connected with speech acts and their interpretation had resulted in many academic discussions and had provoked the formulation of the so-called Cohen’s problem (1964)⁷, which summerises alleged methodological inconsistencies of explicit performative expressions. The problem focuses on interpretational difficulties in cases which involve illocutionary force encoded in a subordinate clause. Such sentences, contrary to intuitive, common sense reading, can be shown to be inherently true. For instance, in saying:

(1) I herby assert that I had never intended to do wrong.

it can be claimed that the sentence is true by the virtue of involving true assertion, i.e. the act of asserting, while the content encoded in the subordinate clause can be in conflict with reality, but also outside the scope of assertion as such.

Thus, the Cohen’s problem can be seen as another argument in favour of the cognitive approach, as it is evident that only through recognition of the dynamicity of language and the reality of meaning construction in the process of communication, can non-prototypical meaning be explained. Such non-prototypical reading of lexical expressions, which involves the

⁵ It should be noted that even disregarding methodological problems related to the performative hypothesis itself, its notion cannot be directly identified with newer approaches discussed here, first of all due to the fact that the levels of meaning allowed within these theories are not (at least entirely) consistent with deep structure and other generative ideas. However, the commitment that speech act involves a semantic-pragmatic value which can be associated with a variety of form brings these approaches closer to each other.

⁶ Cf. e.g. Kurzon 1986, van Dijk 1987; also discussion of speech acts in English legal texts in Witczak-Plisiecka 2001.

⁷ Introduction to the so-called Cohen’s problem can be found in e.g. Lycan 2000, pp.181ff.

speaker's (often less expected) intention, can be exemplified as e.g. humorous or specialized meaning. These meanings are more rooted in context than in the formal aspects of the expressions, i.e. are more dependent on inference than code.

The cognitive approach in the analysis of speech acts can further be justified by reference to other aspects of cognitive studies, most notably their concentration on radial categories. In his Harvard lectures Austin (1962) introduced the important distinction between performative and constative utterances; however, in conclusion he decided that performatives should be included in constatives. His discussion suggests that speech acts are best conceived of in terms of prototypes, which are characterized by specific features; however, most of the features are not necessary. This approach seems to follow into the tradition of Eleanor Rosch (1975), and former linguistic philosophical ideas of Wittgenstein (1953) who introduced the notion of 'family resemblance'. At present the core of these ideas can also be found in Idealized Cognitive Models (ICM) present in the cognitive theory of George Lakoff (e.g. 1987). Eventually, having allowed non-prototypical forms of speech acts, the difference between performative and non-performative uses of language resides in context and its intricacies where the interplay between the illocutionary force and the form being a vehicle for it takes place. Thus, the most typical speech acts, such as:

(2) *I hereby declare the meeting open.*

(3) *I hereby name you 'Strzebrzeszyn'.*

(4) *I declare you man and wife.*

are considered as speech acts, i.e. action performed by language use. They are typically conventional, often fossilized in structure; part to a social ritual.

Speech acts necessarily emerge from social conventions and expectations common to a culture, but are rarely written down or well-defined. Thus, prototype-related categories provide sufficient means for a description of this somewhat gradable arbitrariness, which holds between form and function related to illocutionary force associated with a particular act. Implicit speech acts can be conveyed via the use of forms which significantly depart from explicit speech acts like the ones quoted above even within a sub-type. For instance, a directive speech act can be conveyed via an interrogative form accompanied with relevant intonation, or entirely derive its power from context, which may appear to be a violation of the lexical semantic properties of its linguistic, (non-pragmatic but) semantic form.

On the level of internal, lower-rank categories of speech acts, their classification and recognition is also dependent on pragmatic notions and can only be expressed in terms of fuzzy values, typical and non- or less typical features. Quite often the interpretation of the act involves a degree of vagueness which might be purposeful and intended by the author. The vagueness may result from the pursuit of politeness, or creativity (e.g. humour, sarcasm). Even mundane expressions such as:

(5) *Go to the library and check under 'Polish philosophers of language'*

may be understood (and intended) as a directive, recommendation, advice, a warning, and in fact many other acts.

Within its rich repertoire of possibilities for expressing directives, the English legal language includes modal forms, which are highly specialised and recognised as legal context-specific, cf. the examples below:

(6) ... the authority *shall seek* the views of ...

(7) Students *may enrol* ...

(8) The above mentioned level of 50% *may be changed* by the resolution of shareholders....

(9) ... any such person *will be charged* ...

(10) Every person (...) *must aid and assist* in making the arrest ...

The examples serve to show that illocutionary force is not necessarily bound with a performative verb and may well be conveyed without any loss in its strength via modal expressions.

Both mood and modality are language phenomena which are complex and multidimensional. They involve a variety of forms and functions both intralingually and in a contrastive perspective, and are not readily formalisable in a linguistic description. In most general terms, modality is presented as a semantic-grammatical category, which conveys the speaker's perspective on the content of his or her expression (cf. Palmer 1990, 2001). Due to its complexity and variety of form, but also focus on the Speaker's intention and semantic modulation involved, modality seems to be especially relevant as an object of cognitive analysis. Within the cognitive approach the notion of cognitive mental spaces, as introduced by Fauconnier (1985), and the related notion of cognitive blends, also appear to be relevant and provides an insightful technique for a description of modal meanings in the legal context, which is shown in further sections of the present paper.

4. The deontic *shall* in English legal texts

The verb *shall* is the least frequent modal in the English language. Its distribution within Longman corpus (LSWE) has been determined at 250 uses per million words, with the most frequent English modal verb – *will* – at 3500 uses per million. It also seems insightful that the average frequency of modal verbs in English can be determined at circa 1000-1500 occurrences per million (Biber et al. 1999, p.486). It is commonly accepted that the modal verb *shall* is used in several main senses. The most frequent one is when *shall* is used with future reference, i.e. as a vehicle for the notion of futurity (or/and prediction) in often somewhat formal or even archaic sense in the first person singular and plural and in opposition to *will* used with other grammatical persons, e.g.:

(11) I shall do it later.

or: (12) I shall be twenty five next week.

The example in () already possesses a deontic touch and depending on context can be read either or both as prediction and a promise. Other uses of *shall* involve much fossilised and idiomaticised expressions, which have been pragmaticised in that they are used with a particular well-defined “Shun the ambiguous *shall*. function, e.g. that of proposal:

(13) Shall I carry it for you?

(14) Shall we go out tonight?

Finally, *shall* can be used with a directive force, which normally happens only in formal, most often legal, context.

(15) *The contract shall be deemed null and void should any of the aforesaid clauses not be met.*

Data on etymology informs that the deontic meaning of *shall* was prior to its ‘futurity’-oriented reading. However, although the aspect of duty and obligation is historically stronger, the deontic use has been now restricted to the specialised register of the language of the law. Within the law thus deonticity of *shall* is widely recognised and typical, while outside the domain it is seen as rare and peripheral. As a result *shall*, especially in the legal context, can appear as ambiguous or vague. Used under correct, felicitous circumstances, it can result in the introduction of legal consequences in extralinguistic reality. At the same time it can be perceived as descriptive of the future, the future which is both expected and ‘required’. This aspect reveals what can be recognised as non-temporal or rather atemporal nature

of deonticity in general and is reflective of the complexity of the relation between mood, modality and tense. Even within the English legal language researchers and practitioners do not always agree on the standard readings of *shall*. Expert opinions range from those in favour of the deontic reading towards those which suggest that the use should be banned altogether, cf. the quotation below cited as (16) and (17), which illustrate contrary views on the usefulness of *shall* in the legal context:

(16) “the use of ‘*shall*’ indicates that the legal subject is under obligation to act in accordance with the terms of the provision (...) it does not indicate something in relation to the future” (Robinson 1973: 39)

(17) The word is used vaguely in five distinct ways, and it requires interpretation. (...) It is a “dead” word never heard in everyday conversation. (...) [Y]our reader encounters it only in contracts, rules, regulations, and so on. (...) *Shall* has been interpreted in various ways by various judges; some say it means “must,” but others insist it’s just a recommendation, and means “should.” Never *suggest* legal obligation. *State* it.” (Lauchman 2005: 47)

The opinion cited as example (17) places itself in the mainstream of the so-called Plain Language Movement, whose main objective is to make legal language more comprehensible to lay people. The movement, which originated in the United States with the suggestion that jury instructions should be rewritten so people not trained in the law could understand them better, has gained many supporters over the world and has spread onto many other also non-English language-oriented legal cultures. However, voices against the ‘legal’ use of *shall* have also come from professional linguists, cf. Trosborg 1991, 1994.

The complexity and of the deontic *shall* and its semantic nature can also be seen in contrastive studies and in translation. For instance in Polish, deonticity can be both rendered via the use of the present tense and morphologically marker future, cf. examples below cited as Table 1:

The data shown in Table 1 above seems to reinforce the belief that expressions with *shall*, as in fact other modal expressions, are typically atemporal in nature. This atemporality, where especially the future and the present are merged into a unit, is clearly visible in contrastive studies. In Polish deonticity is rendered both via the use of the future tense and the present. Not always the present and the future forms are felt to be entirely equivalent, however, in most cases it can be said that the present ‘includes’ the future or extends into it due to the deonticity encoded in the expression.

The use of *shall* in the legal context suggests that the expressions are primarily performative in nature; they are to be operative in the law and to introduce extralinguistic results. Some of these results are immediate, others can be 'planned', introduced at the time indicated, or just potential; however, in all cases the law itself becomes a binding description of reality. Thus, it may seem that *shall*, at least in the legal context, should not be associated with the notion of futurity, but only that of deonticity. However, disregarding the future reading of *shall*, even as used in English legal documents, evidently hurts intuitions of language users, who normally, even if trained in the law, perceive this use as a mixture of *futurum* and deonticity or just a (present) description of the desired (future) state of affairs.

Table 1: Samples of shall in the legal context with relevant Polish equivalents

1.	Distribution of the net profit shall be done by resolution of the shareholders.	podział (...) dokonywany jest [present tense] uchwałą ...
2.	The reserve capital shall be created by deduction of 50% of early net profit.	Kapitał rezerwowy tworzony będzie [future tense] rokrocznie poprzez ...
3.	The right of the member of the board of directors to manage the affairs of the company and to represent it shall cover all court proceedings and out of court dealings of the company.	Prawo członka zarządu do prowadzenia spraw Spółki i jej reprezentowania dotyczy [present tense] wszystkich czynności sądowych i pozasądowych Spółki.
4.	The resolution of the board of directors shall be adopted by absolute majority of votes	Uchwały zarządu zapadają [present tense] bezwzględną większością głosów obecnych
5.	(...) in the event of an equal number of votes the president of the management board shall have the casting vote.	(...) w razie równowagi głosów decydującym jest [present tense] głos prezesa zarządu.
6.	The calendar year shall be the financial year of the company.	Rokiem obrotowym Spółki jest [present tense] rok kalendarzowy.
7.	The remuneration of members of the company's bodies shall be fixed by a resolution of shareholders.	Zasady wynagradzania członków organów Spółki określone są [present tense] uchwałą wspólników Spółki.
8.	The opening of liquidation shall result in the expiry of the power of the commercial power of attorney.	Otwarcie likwidacji powoduje [present tense] wygaśnięcie prokury.
9.	The annual fee shall be paid at the time of ...	Opłaty roczne wnoszone będą [future tense] ...

10.	If the child support payment is a fixed sum, it shall be adjusted annually ...	Jeżeli alimenty płacone na dziecko określone są sumą będą rewaloryzowane [future tense] każdego roku
11.	The fee shall be doubled each succeeding year in which the annual fee remains unpaid,...	Nieuiszczenie opłaty spowoduje podwojenie [future tense] jej w kolejnym roku,
12.	... but the total annual fee shall not exceed cała suma nie może jednakże przekroczyć [present tense]...
13.	The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.	Osoby zawodowo związane z instytucją adopcji nie (będą) mogą otrzymywać [present tense; future use indicated in the brackets as possible] wynagrodzenia, które byłoby niewspółmiernie wysokie w stosunku do wykonywanych przez nie obowiązków.
14.	No person shall act as an election officer knowing that they do not meet the requirements for an election officer set out in this section.	Osoba, która posiada wiedzę, że nie spełnia wymaganych kryteriów, nie ma prawa pracować [present tense] jako urzędnik wyborczy.
15.	No one shall derive improper financial or other gain from an activity related to an intercountry adoption.	Nikt nie ma prawa osiągać [prezent tense] niedozwolonych korzyści materialnych lub innych korzyści w związku z wykonywaną pracą na rzecz adopcji międzynarodowej.

In summary, the use of *shall* in the legal context can be accounted for in a number of ways. One solution is to accept that the verb is used in legal texts in two different ways, either (1) as a vehicle for deonticity or (2) as a grammaticalised form to refer to the future. This approach finds it difficult to explain the uses which appear as vague between the two readings. On the other hand accepting that *shall* is just context-sensitive and its reading can only be revealed in a particular context does not seem theoretically fruitful as it is not able to solve theoretical problems and systematically account for differences sound for language users. These pragmatic in nature approaches further introduce problems related to the accessibility of context, its being given or chosen, and postulate subjectivity in language reception.

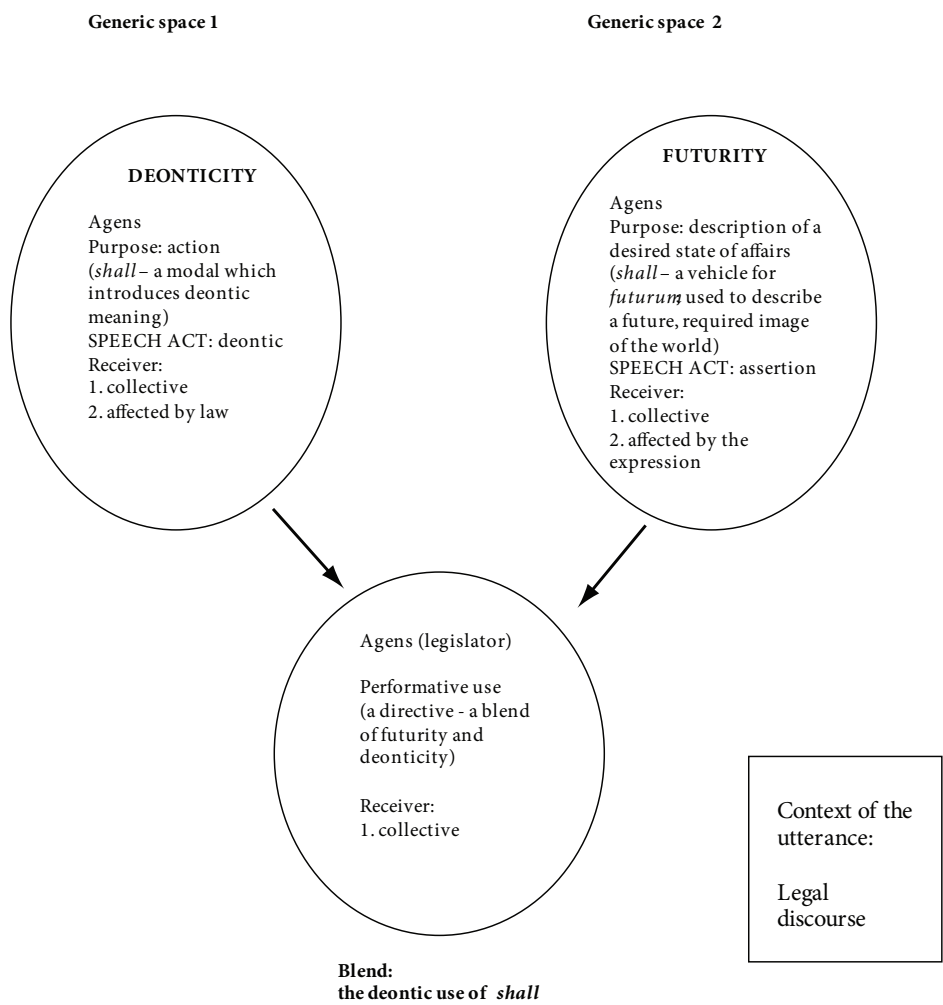
It can also be suggested that the contemporary reading of *shall* illustrates the fact that the verb is being affected by the on-going or heterogenious

process of grammaticalisation, i.e. a transition from being a lexical category towards becoming a grammatical one. Within this approach, it may be argued that in selected contexts *shall* may behave as a modal verb, which still possesses its lexical semantic power, while in others it may behave as a purely grammatical (and grammaticalised) category, whose function is similar to that of inflectional morphemes in other languages, e.g. Polish. This approach must face the problem that the deontic reading of *shall* is historically prior to its other readings, thus, it could be seen as grammaticalisation which works semantically backwards, towards less frequent meaning which in the past had been central, while in grammaticalisation etymologically original meaning should be the basis and not the result of the process. However, the 'future' reading of *shall* is nowadays more transparent to most language users than its deontic meaning, especially among people who are not within the legal profession. Thus, the grammaticalisation hypothesis can be supported by accepting that deonticity of *shall* in the legal context is a product of grammaticalisation of a particular contextual aspect, resulting in its fossilization and a high level of conventionality. It also points to the fact that legal language as a sub-domain of natural language is hermetic and not easily accessible to lay persons.

It seems that the best description of the use of *shall* in the legal context can be achieved within the cognitive approach by reference to the concept of the conceptual blend (cf. Fauconnier and Turner 1996), which coordinates at least two mental spaces. A cognitive blend is a complex structure composed of elements available in context and integrated in a sufficient degree to be perceived as a coherent conceptual/mental unit. The theory claims that cognitive blends are created within a discourse frame. Thus, this method of description allows to account for the functional, legal use of *shall* with relation to two basic performative categories, i.e. the speech acts in the form of a directive and of an assertion. The understanding of a speech act as a psychologically motivated category (as suggested by Barker 2004), which is a function of a linguistically coded intentional state of a language user, seems to reinforce the validity of this approach. Both Barker's approach and cognitive linguistics are psychologistic in nature and recognize the compositionality of intentional states and linguistic expressions. Both theses approaches also accept that intentional states are prior to language and accept that primary, 'simple' intentional states may motivate much more complex linguistic expressions, expressions which are complex in their logical and grammatical

form. It results from the approach that language is a morphological-syntactic system, which possesses complex speech act characteristics, a system which integrates form and function.

Figure 1: The image of the deontic shall as a cognitive blend.



In conclusion it is theoretically sound and in agreement with language users’ intuitions to indicate a cognitive blend which exemplifies a unit

composed of elements of assertive and directive speech acts. From another perspective this blend may be viewed as a blend of the notion of *futurum* and deonticity, because both these notions may be perceived as dynamic and against the background of ongoing processes of grammaticalisation, where semantic spaces merge one with another. The concept of mental spaces has already been applied to the analysis of modal meanings by Eve Sweetser (1990), who, however, indicated just three basic aspects of modal vague meanings which were to correspond to three basic mental spaces, i.e. content, epistemic meaning, and speech act meaning (cf. Sweetser 1990, p.74).

The notion of the blend makes it possible to explain the differences in context accessibility and as a result recognition (or the lack of it) of the deontic function of *shall*, which for some users is evident and for others instantiates a structure which requires complex processing. Such perceptual differences result from differences in the ability to recognize a relevant context, here-legal specialized sub-domain. Below a tentative schematic representation of the use of the legal *shall* as a cognitive blend has been presented⁸.

5. Conclusions

The cognitive linguistic description of the legal *shall* presented above is tentative and by no means final or exhaustive. However, even on this limited level it is evident that it is able to embrace many salient aspects of the semantics of both the modal *shall* and modal verbs as well as modality in general. Due to its focus on the dynamicity of meaning, it attracts attention to the fact that categorisation in language naturally cannot be discussed in terms of clear-cut domains. All categories necessarily possess more typical members and members which pose problems in classification; acknowledging the fact allows for a description of language which is non-contradictory and adequate. The cognitive account of linguistic phenomena are also coherent and able to present phenomena which are particularly susceptible to context variation, including those related to the legal domain.

The deontic-*futurum* blend, which can be exemplified by the deontic meaning of *shall* in the legal context, can be successfully coordinated with the pragmatic theory of speech acts, within which it can be seen as a blend

⁸ In the diagram the fourth element, i.e. the generic space, often recognized as separate ext to two input spaces and the blend, has been integrated with the input constituents.

of an assertion and a directive. In most general terms it is a description of a desired state of affairs, which via its 'ritualised' form and performative, operative, illocutionary force is to be introduced into extralinguistic reality, where things are to be done with words.

Bibliography

- Akmajian, A., R.A. Demers, A.K. Farmer i R.M. Harnish, 2001. *Linguistics. An Introduction to Language and Communication*. 5th ed. Cambridge, Mass.: MIT Press
- Austin, J.L. 1962. *How to Do Things with Words*. London: Oxford University Press.
- Barker, Stephen J. 2004. *Renewing Meaning. A Speech-Act Theoretic Approach*. Oxford: Clarendon Press.
- Biber, Douglas, Stig Johansson, Geoffrey Leech, Susan Conrad & Edward Finegan 1999. *Longman Grammar of Spoken and Written English*. Harlow: Longman.
- Blakemore, D. 1989. "Linguistic form and pragmatic interpretation: the explicit and the implicit" In: *The Pragmatics of Style* ed. by L. Hickey. London: Routledge, pp.28-51.
- Carston, R. 2002. *Thoughts and Utterances. The Pragmatics of Explicit Communication*. Oxford: Blackwell.
- Van Dijk, T.A. 1977. *Text and Context*. London: Longman.
- Fauconnier, G. 1985. *Mental Spaces: Aspects of Meaning Construction in Natural Language*. Cambridge, Mass.: The MIT Press.
- Fauconnier, G. 1999. "Methods and generalisations" In: Janssen, T. & G. Redeker, pp. 96-127.
- Fauconnier, G. i M. Turner 1996. "Blending as a Central Process of Grammar" In: A. Goldberg *Conceptual Structure, Discourse and Language*. Stanford: CSLI, pp. 113-130 (the expanded version of the article i salso available In Polish in: W. Kubiński & D. Stanulewicz (eds.) (2001) *Językoznawstwo kognitywne II. Zjawiska pragmatyczne*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, pp. 173-211).
- Harris, R. 1998. *Introduction to Integrational Linguistics*. Oxford: Pergamon.
- Janssen, T. & G. Bedeker (eds.) *Cognitive Linguistics: Foundations, Scope, and Methodology*. Berlin & New York: Mouton.
- Kalisz, R. 2001. „Pojęcia pragmatyki językowej w świetle językoznawstwa kognitywnego” In: W. Kubiński & D. Stanulewicz (eds.) *Językoznawstwo kognitywne II. Zjawiska pragmatyczne*, pp. 13-21.
- W. Kubiński & D. Stanulewicz (eds.) 2001. *Językoznawstwo kognitywne II. Zjawiska pragmatyczne*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego.

- Kurzon, D. 1986. *It is Hereby Performed ... Explorations in legal speech acts*. Amsterdam & Philadelphia: John Benjamins.
- Lakoff, G. 1987. *Women, Fire, and Dangerous Things: What Categories Reveal About the Mind*. Chicago: The University of Chicago Press.
- Langacker, R.W. 1983. *Foundations of Cognitive Grammar*, 2 vol. Trier: LAUT.
- Langacker, R.W. 1999. *Grammar and Conceptualization*. Berlin: Mouton de Gruyter.
- Lauchman, Richard, 2001-2005. *Plain Language. A handbook for writers in the U.S. Government*. <http://www.lauchmangroup.com/PDFfiles/PLHandbook.PDF> (accessed May 2005)
- Lycan, W.G. 2000. *Philosophy of Language. A contemporary introduction*. London & New York: Routledge.
- Palmer, Frank R. 1990. *Modality and the English Modals* (2nd ed.). London & New York: Longman.
- Palmer, Frank R. 1986/2001. *Mood and Modality*. Cambridge: CUP.
- Robinson, Stanley, 1973. *Drafting: Its application to conveyancing and commercial documents*. London: Butterworths.
- Rosch, E. 1975. "Cognitive representations of semantic categories." *Journal of Experimental Psychology: General*, 104, pp.192-233.
- Ross, J.R. 1970. "On Declarative Sentences" In: R.A. Jacobs & P.S. Rosenbaum (eds.) *Readings in English Transformational Grammar*. Waltham, Mass.: Ginn., pp.222-272.
- Sadock, J. 1974. *Toward a Linguistic Theory of Speech Acts*. New York: Academic Press.
- Searle, J.R. 1969. *Speech Acts. An Essay in the Philosophy of Language*. Cambridge: Cambridge University Press.
- Searle, J.R. & D. Vanderveken, 1985. *Foundations of Illocutionary Logic*. Cambridge: Cambridge University Press.
- Sweetser, E. 1990. *From etymology to pragmatics. Metaphorical and cultural aspects of semantic structure*. Cambridge: Cambridge University Press.
- Sweetser, E. 1999. "Compositionality and blending: semantic composition in a cognitively realistic framework" In: Janssen, T. & G. Redeker, pp. 129-162.
- Toolan, M. 1996. *Total Speech: An Integrational Linguistic Approach to Language*. Durham, NC: Duke University Press.
- Trosborg, A. 1994. "Acts' in contracts: Some guidelines for translation". *Translation Studies – An Interdiscipline*. ed.by M. Snell-Hornby et al. Benjamin Transl. 2, pp.309-318.
- Trosborg, A. 1991. "An Analysis of Legal Speech Acts in English Contract Law" *Hermes Journal of Linguistics*, vol.6, pp.65-90.

- Vanderveken, D. 1990. *Meaning and Speech Acts*. Vol.1: Principles of Language Use. Cambridge: Cambridge University Press.
- Vanderveken, D. 1991. *Meaning and Speech Acts*. Vol.2: Formal Semantics of Success and Satisfaction. Cambridge: Cambridge University Press.
- Vanderveken, D. 1994. "A complete formulation of a simple logic of elementary illocutionary acts" In: S.L. Tsohatzidis (ed.) *Foundations of Speech Act Theory: Philosophical and Linguistic Perspectives*. London and New York: Routledge, pp. 99-131.
- Verschueren, J. 1999. *Understanding Pragmatics*. New York: Arnold.
- Witczak-Plisiecka, I. 2001. *Semantic and Pragmatic Aspects of Speech Acts in English Legal Texts*, niepublikowana praca doktorska, Uniwersytet Łódzki.
- Wittgenstein, L. 1953. *Philosophical Investigations*. New York: Macmillan.

Streszczenie

Niniejszy tekst porusza problemy integrujące trzy pola badań nad językiem: teorię aktów mowy, językoznawstwo kognitywne oraz język prawa. Głównym celem artykułu jest ukazanie adekwatności zastosowania metodologii kognitywnej w badaniach aktów mowy. Jako studium przypadku przedstawiono deontyczne użycie angielskiego czasownika 'shall' w tekstach prawnych. Analiza ilustrowana jest przykładami zaczerpniętymi z korpusu anglojęzycznych tekstów prawnych.

Dyskusji poddano występowanie czasownika, który w kontekście prawnym najczęściej stosowany jest w celu narzucenia obowiązku lub autoryzowania czynności. Jego znaczenie może w kategoriach aktów mowy określone być jako złożenie asercji i dyrektywy, natomiast w tradycyjnych kategoriach gramatyki wyrażenia takie rozpatrywać można jako formy czasu przyszłego, teraźniejszego, lub złożenie ich obydwu.

Tekst sugeruje, że ze względu na dużą wrażliwość na kontekst, znaczenie 'shall' w tekstach prawnych najlepiej opisane być może w kategoriach amalgamatu (ang. 'blend'), który łączy różnorodne aspekty semantyczne. Aspekty te, które są z natury nieostre i mogą stanowić elementy postępującej gramatyzacji, uchwycone być mogą jedynie w odniesieniu do kontekstu wypowiedzi, zatem najtrafniej analizowane być mogą w dziedzinie pragmatyki językowej.