

PARAPHRASES OF LEGAL TERMINOLOGY BASED ON LAY PERCEPTIONS

Mami Hiraike OKAWARA

School of Regional Policy, Takasaki City University of Economics
1300 Kaminamie, Takasaki, Gunma 370-0801 Japan
mamihoka@tcue.ac.jp

Abstract: This paper discusses the issue of plain legal language in Japan. First, several legal language battles between legal and lay people are shown, followed by a paraphrase work on civil legal terms based on a research titled ‘A Study on Paraphrase of Civil Legal Terms based on Lay Perception’, which was funded by Grants-in-Aid for Scientific Research of Japan Society for the Promotion of Science from April of 2012 to March of 2013. The research was conducted, using corpus analysis of civil legal terms appeared in ordinary writings and questionnaire of legal experts. The finding of the research is that ‘misunderstood’ legal words which appear more than 50% in non-legal writings is an obstacle to lay understanding. One ‘misunderstood’ legal term ‘intent’ (故意) is selected for paraphrase analysis from the point of views of antonym, synonym, derivative of legal term.

Key words: civil legal terms, corpus analysis, synonym, antonym, derivative

市民に分かりやすい民事関連法律用語の言換えに関する研究

要約: 本稿では、法律用語の平易化について論じる。まず、法律家と非法律家の難解な法律文書や法律用語についての議論を紹介する。次に、科研費による研究(挑戦的萌芽研究平成24~25年度「市民に分かりやすい民事関連法律用語の言換えに関する研究」研究代表者(大河原真美)について解説する。本研究では、民事関連の法律用語についてのアンケート調査とコーパス調査を行って、アクセス障害となっている難解な法律用語を抽出し、反対語、類語、派生語からの解説を提案した。

キーワード: 民事法律用語、コーパス分析、類語、反対語、派生語

PARAFRAZY TERMINOLOGII PRAWNICZEJ OPARTE NA OGOLNYM ROZUMIENIU PRZEZ LAIKOW

Abstrakt: Praca dotyczy kwestii stosowania prostego języka prawnego i prawniczego w Japonii. W pierwszej części autorka omawia spór toczący się w tym zakresie pomiędzy prawnikami i laikami. Następnie omawia badanie dotyczące parafrazy terminologii prawa cywilnego w ramach grantu naukowego pt. ‘A Study on Paraphrase of Civil Legal Terms based on Lay Perception’, finansowanego przez Japońskie Stowarzyszenie Promocji Nauki od kwietnia 2012 do marca 2013 roku. Badanie wykazało, że w wielu przypadkach terminy prawnicze są błędnie rozumiane przez użytkowników nie mających wykształcenia prawniczego. Jednym z takich terminów jest ‘zamiar’ (故意).

Słowa kluczowe: terminologia prawnicza, analiza korpusowa, synonim, antonym, wyrazy pochodne

1. Introduction

Legal terminology is often incomprehensible to lay people. Lay people consult dictionaries on legal technical terms only to find that the explanations on the dictionaries are no help at all. This is because legal dictionaries are made by legal experts for legal experts and law students.

In this paper I would like to take up the issue of plain legal language. First, I would like to show several legal-Japanese language battles between legal and lay people, followed by some earlier studies of legal language in general. After that, I would like to propose our paraphrase work on legal terms based on our research, *A Study on Paraphrases of Civil Legal Terms based on Lay Perception*, which was funded by Grants-in-Aid for Scientific Research of Japan Society for the Promotion of Science. Co-researchers of this research are Makirou Tanaka (Meiji University), Richard Powell (Nippon University), Hiroyuki Kanemitsu (Takasaki City University of Economics). Yumi Miyazaki (Senshu University) is our research assistant. We would like to conclude that adequate paraphrase requires legal reasoning as well as corpus linguistics.

2. Some Earlier Studies of Legal Language

A pioneer work on legal language is the work of law professor Mellinkoff (1963), who discussed the peculiarity of English legal language from the perspective of the lexicon: (1) frequent use of common words with uncommon meanings; (2) frequent use of Old and Middle English words once in use but now rare; (3) frequent use of Latin words and phrases; (4) use of Old French and Anglo-Norman words not in the general vocabulary; (5) the use of terms of art; (6) frequent use of formal words; and (7) deliberate use of words and expressions with flexible meanings.

Following Mellinkoff's work linguists conducted the analysis of legal language. Crystal and Davy (1969) first drew attention to sentence length in legal language. They noted the extreme length of sentences with arrays of subordinate devices and the repetition of lexical items and a scarcity of anaphora. This is because legal experts want all the necessary information to be presented in one single sentence. The reason behind this is that one can avoid possible legal challenges resulting from problems of coherence of words.

For the strategic point of view, passives and nominalizations are used to obscure the actor. Tiersma's example (1999: 77) is that the defendant's attorney can write "the (girl's) injury happened at 5:30" instead of "the defendant injured the girl at 5:30".

Another source of syntactic elaboration relates to grammatical metaphor, which contributes to the incomprehensible nature of legal documents. Halliday (1985: 93-106) introduced the notion of grammatical metaphor in the process of differentiating between written and spoken languages. What Halliday noted is that something represented as a verb can be represented as a noun. Gibbons (2002: 20) then stated that grammatical metaphor can contain dense packaging of information in the form of a noun phrase. However, the sentence itself turns out to be simple. In other words, complex information can be expressed in a form of a simple sentence with noun phrases of densely packed information.

Legal language appears incoherent to lay people. Understanding legal language takes a special method of interpretation. Azuelos-Atias (2011) argues that a specialized legal meaning is conveyed implicitly. I would like to note in that such a special method of interpretation needs to be elaborated to serve as an intermediary between lay and legal experts.

3. Legal Language Battles

3.1 Linguist v. Cabinet Legislation Bureau Director

The incomprehensible nature of legal language became a growing concern among Japanese non-legal experts in the late 1950s. A linguist, Tadatoshii Okubo evaluated the readability of 警職法の一部を改正する法 (Partial Revision to the Performance of Police Function Act). Okubo pointed out five distinctive features of legal language from his language diagnosis of the police act. He then named these five features after disease: an extremely-long-sentence disease; an extremely-long-modifier disease; a subject & verb-placed-farther disease; an unconsciously deleting-statements disease; and an excessively-inserting-conditionals disease. He contributed his diagnosis analysis entitled 「法令用語を診断すれば一構文上から見た法律文書のわかりにくさ分析」

(*A diagnose on legal language – An syntactic analysis on incomprehensible nature of legal language*) to the February 1959 issue of 『法学セミナー』 (*Seminar on Legal Studies*).

As Okubo's article is caustic to legal experts, Shuzo Hayashi, director general of the Cabinet Legislation Bureau, made a rebuttal statement in the March issue of the same journal. Hayashi argued that the incomprehensible nature of legal language is a necessary evil associated with the nature of law. Legal language is required to be accurate and to insert niceties of the law as well. An incomprehensible-looking feature of legal language is actually providing a guidepost by a legal writer to make legal writings more readable. The guidepost reduces the complexity involved in legal language. Okubo, instead of countering, discussed incomprehensible nature of another type of legal

writing, court judgments in the May issue of the same journal. Okubo stated judgment and acts share similarity in the nature of incomprehensibility.

3.2 Critic v. Judge

A science critic called Yasuo Shizume co-signed his friend's word-processor when a word-processor cost €6,500 around 1985 in Japan. Unfortunately his friend suspended payment due to his financial difficulty. The cosigner Shizume then received a judgment to pay the debt from a summary court where the case of his friend's inability to pay debts was tried. It was written in the judgment that 被告らは原告に対し 各自90万円を支払え (the defendants pay €6,500 individually (各自kakuji) to the plaintiff). Shizume planned to appeal the ruling because he thought that the debt turned to be €13,000 which was a double "price" of the original debt. However, Shizume immediately consulted with an attorney. The attorney said that 'individually' (各自kakuji) means 'jointly' (連帯してrentai shite) in legal language, and thereby no need to appeal.

The lawyer's explanation was that in a joint litigation a ruling is given to each debtor and only the total amount of debt is therefore written in the judgment and just ends at that point. The court has no concern with how much share of the debt each defendant decides to pay. It is therefore the best way to state simply the total amount of debt in the ruling.

Shizume, however, was not able to understand the legal usage of 'individually' synonymous with 'jointly' in the ordinary language. He contributed a short critical essay titled 裁判官の国語力は中学生並み? (*I wonder if judges' verbal attitude is on the same level of that of junior high school students?*) to *Jurist*, one of the most prestigious Japanese legal journals, making a scathing attack on the use of legal terminology. He severely criticized the legal synonymous term, stating that judges would definitely fail in two subjects of the entrance examination of junior high school: Japanese and mathematics. Judges should simply add the term 'the total amount' to the amount of the debt, which is good enough.

Facing such criticism, former judge of Tokyo High Court Takuji Kurata offered rebuttals to Shizume's criticism in his book 『続・裁判官の書斎』 (*A Sequel to 'A Judge's Study Room'*). From a perspective of legal experts, Kurata said that Shizume's argument is quite absurd. Shizume apparently does not understand that the main text of judgment is deemed to be the title of obligation, which is likely taught in the class of social studies at high school. His knowledge about justice system therefore remains as the level of junior high school students.

The misunderstanding or confusion arises when ordinary words are used as a legal term which represents an unfamiliar legal concept from lay perspectives. Tiersma (1999: 111) named a word which has a legal meaning very

different from their ordinary significance as “legal homonym”. More concretely, Tiersma states that a great deal of legal vocabulary looks like ordinary language, but has quite a distinct meaning. Legal homonyms can be very misleading to lay understanding. The paraphrase of legal homonym is therefore important for the study of plain legal language.

4. Paraphrases of Civil Legal Terms

4.1 Design and Method

In order to offer more comprehensible paraphrases of some Japanese civil law terms, we conducted our research in five steps:

- (1) Questionnaire of legal practitioners;
- (2) Selection of 234 legal words;
- (3) Corpus analysis of 234 legal words;
- (4) Classification of misunderstood terms and unintelligible terms from a list of 98 words;
- (5) Paraphrases of ‘misunderstood’ terms.

4.2 Results

4.2.1 Questionnaire of Law Practitioners

We asked legal practitioners to give us some three legal terms which they found it difficult in the communication with their clients or parties. We got answers from 48 legal practitioners (31 judicial scriveners, 16 attorneys and 1 judge). Respondents wrote 74 words. Table 1 indicates top five words of those difficult words.

Table 1. List of Top 5 Difficult Words

Legal terms	Number of legal practitioners
瑕疵 (defect)	8 (6 attorneys + 2 judicial scriveners)
債務名義 (title of debt)	4 (1 attorney + 3 judicial scriveners)
善意 (without knowledge of) 悪意 (with knowledge of) (with knowledge of)	3 (1 attorney + 2 judicial scriveners)
遺産分割 (partition of the estate)	3 (3 judicial scriveners)
同時廃止 (simultaneous discontinuance, simultaneous abolition of bankruptcy)	3 (1 attorney + 2 judicial scriveners)

瑕疵 (defect) was made the top first in the list. 瑕疵 is predominantly used when buying secondhand houses or condominiums. The Chinese characters of 瑕疵 is difficult ones for lay Japanese because these Chinese characters are out of the national list of Chinese characters in common use. On the contrary, common Chinese characters are used for 債務名義 (title of debt), 遺産分割 (partition of the estate), 同時廃止 (simultaneous discontinuance, simultaneous abolition of bankruptcy), 善意 (without knowledge of) and 悪意 (with knowledge of).

Among the four legal terms 債務名義, 遺産分割 and 同時廃止 are a composite word which is a combination of two ordinary words respectively. Lay people might feel they know rough meanings of these legal terms because each word such as 債務, 名義, 遺産, 分割, 同時, 廃止 are commonly used familiar words for them. The combination of these words is very uncommon, though.

悪意 (with knowledge of) and 善意 are a typical example of Japanese legal homonym. Ordinary usage of 悪意 (with knowledge of) and 善意 are ‘evil intent’ and ‘good intent’, which are totally different from their respective legal usages.

Other unintelligible words are the name of roles related to the justice system: 被相続人 (ancestor), 申立人 (petitioner), 相手方 (the other party). The difficulty of these words is easily solved if the function of justice system is taught at a social studies class. However, one confusing legal example is 社員 (partner) which means ‘partner’. In ordinary Japanese 社員 indicates an ‘employee’, not a ‘partner’. It is another example of legal homonym.

One more difficulty pointed out by legal practitioners is synonyms of legal terms such as 悪意 (with knowledge of), 故意 (intent). Minced legal notion is unintelligibility to lay people. Legal practitioners are required to explain the legal notion of terms in question.

It is important to note that both legal homonym and composite word cause more problems than legal terms with unfamiliar words in the communication between legal and lay people.

4.2.2 Selection of 234 legal words

We selected 234 civil law terms, using an introductory law book titled 『日本法への招待』 (*Law Students in Wonderland: An Invitation to Japanese Law*), which is aimed for international students who study Japanese laws. We then undertook research on actual lay usage of these 234 words, using the 『現代日本語書き言葉均衡コーパス』 (Balanced Corpus of Contemporary Written Japanese (BCCWC)) provided by 国立国語研究所 (National Institute for Japanese Language and Linguistics). BCCWC is the only available balanced corpus of modern Japanese which includes 104,300,000 words from books, journals, newspapers, blogs, online messages, textbooks, laws.

4.2.3 Corpus analysis of 234 legal words

We retrieved the 234 words, using a search tool called 「中納言」 (Chunagon) and downloaded all the usage examples of the 234 words. We then classified all the usage examples into two types: legal field and non-legal field. Those emerged less than 50% in non-legal writings are grouped under legal-field words whereas those appeared more than 50% in non-legal writings are categorized as non-legal words. For statistical reason we selected 98 words from these 234 words.

Table 2 shows legal terms which appear both the top five words and the bottom three words in legal field.

Table 2. Ranking list of legal terms

Rank	Legal term	Legal field	Non-legal field
1	先取特権 (the right of priority)	192 (97%)	6 (3%)
2	地役権 (easement)	86 (96.6%)	3 (3.4%)
3	留置権 (right of retention)	68 (95.8%)	3 (4.2%)
4	物権 (property right)	451 (93.2%)	33 (6.8%)
5	債務名義 (title of debt)	127 (90.1%)	14 (9.9%)
94	雇用 (employment)	518 (7.2%)	6705 (92.8%)
95	着手 (start)	83 (6.2%)	1253 (93.8%)
96	共有 (share)	163 (5.5%)	2822 (94.5%)
97	申込み (application)	168 (3.8%)	4261 (96.2%)
98	認知 (cognition)	65 (2.8%)	2259 (97.2%)

4.2.4 Classification of misunderstood terms and unintelligible terms

We classified the 98 words into two groups: misunderstood-word group and unintelligible-word group. The definition of misunderstood legal word is a group of legal words which appear more than 50% in non-legal writings. As we mentioned before, the questionnaire of legal practitioners indicates that legal homonym and composite word causes misunderstanding to lay people. This is because a commonly used legal word in ordinary language makes lay people feel that they know the word without knowing its technical legal meaning. This type of legal words is misunderstood by lay people and thereby is labeled as

“misunderstood terms”. Among 98 legal words, 63 legal words occur more than 50% in non-legal writings.

Unintelligible terms were not analyzed in this research because they are less problematic due to their apparent-looking unintelligible nature.

4.2.5 Analysis of a “misunderstood” term of 故意 (intention)

(i) Part of Speech

We took up a ‘misunderstood’ legal term 故意 (intention), which is made the 56th in the list of 98 words. We analyzed 故意 (intention) from part of speech, legal antonym, legal synonym and derivative word.

Table 3 shows the part of speech of 故意 (intention). 故意 (intention) appears as noun, adverb, composite word in both legal and non-legal fields. However, the appearance-share of legal field is different from that of non-legal field. In legal field 故意 (intention) occurs as a noun by 70% while 故意 (intention) appears only by 33.5%. 故意 (intention) in non-legal field more commonly occurs as adverb. Following examples show some examples of different types of share between legal field and non-legal field.

Table 3. Part of Speech of 故意 (intention)

Part of Speech		Legal field	Non-legal field
Simple Words	Noun	160 (70.2%)	67 (33.5%)
	Adverb	29 (12.7%)	116 (58.0%)
Composite Words		39 (17.1%)	17 (8.5%)
Total		228 (100.0%)	200 (100.0%)

The following example of 故意 (intention) appears as noun in legal field. 故意 (intention) is the target of presence or absence. This is because the existence of one legal notion is important in legal field.

実務では、保険契約との関係で故意 (intention) の有無が重要である。(円谷峻「不法行為法・事務管理・不当利得」)

(On a practical level the existence or non-existence of intent is important in relation to contract of insurance.)

However, the usage of adverb is composed of nearly 60% of all word classes of non-legal usages, as in the following example.

国の補助を得やすくするために、故意 (intention) に古いデータで基準をオーバーしたものを報告したというところまであった。(小林道正「数学的発想」勉強法)

(In order to make it easy to obtain financial support from the national government, it got to the point that they intentionally reported an acceptable data used by old data.)

It is interesting to note that 故意 (intention) appears as a noun after a subsidiary verb such as *だ, です, である* in non-legal field.

何度も同じことをされるなら、気のせいとかたまたまではなく、故意 (intention) でしょうね。(Yahoo!知恵袋)

(If we are done the same things many times by them, it isn't our imagination, or it isn't by chance, it must be their intention.)

(ii) Legal Antonym

When 故意 (intention) is used as a noun form in legal field, 故意 (intention) often appears with 過失 (negligence), as in the following example.

故意 (intention) または過失 (negligence) によって一時そのような弁識能力を欠く状態を招いた場合は、(田中嗣久・田中義雄「民法がわかった」)

(When a situation in which one is unable to understand right from wrong, is brought intentionally or negligently.)

We would like to call such a tied-relationship like 故意 (intention) and 過失 (negligence) 'legal antonym'. Tiersma (1999: 114) states that antonyms have most semantic features in common, but typically differ in one critical respect. It is this critical point that is the core of legal reasoning.

故意 (intent) and 過失 (negligence) are one of the requirements for an unlawful act in a civil case. 故意 (intention) means one's state of mind that one conducts illegal activities while he/she is aware of the occurrence of damages. On the other hand, 過失 (negligence) indicates a situation that one inadvertently misses the recognition of the occurrence of damages although he/she can do so. The critical point of the difference is the existence of recognition of the occurrence of damages, which would result in the level of responsibility and the amount of payment of damages. This kind of recognition does not exist in the mind of lay people as Tiersma also states that many pairs of words turned into antonyms, even though they have no such relationship in ordinary language.

(iii) Legal Synonym

It is important to note that 故意 (intention) in legal field means the recognition of the occurrence of damage, though the English translation of legal 故意 (intention) is 'intent'. On the other hand, 悪意 (with knowledge of) in the legal field is more similar to 故意 (intention) in non-legal field. The relationship between 故意 (intention) and 悪意 (with knowledge of) can be defined as "legal synonym". It is not easy for lay people to understand that 故意 (intention) and 悪意 (with knowledge of) are legal synonym. The difficulty of lay understanding was pointed out in the questionnaire of

legal practitioners. Legal synonym tells the important distinction which law wants to make in legal writing.

(iv) Derivative Word

Finally, I would like to show 故意 (intention) as a derivative word. Examples of legal field are 故意 (intention), 構成要素 (intentional components of intent), 故意 (intention), 不法行為 (intentional illegal conduct). All these words are nouns which have legal technical meanings. 故意的 (intentionally) found in non-legal field does not appear in legal field. 故意的 (intentionally) is an adjective usage, which is an example of non-legal usage. 的 (-like) is a derivative word in ordinary language as in the examples of 自己的 (to oneself) and 故意 (intention) is a word attached to the derivative word. In other words, 故意 (intention) is a key legal notion in legal field but just one of words in non-legal field.

5. Conclusion

“Misunderstood” legal words which appear more than 50% in non-legal writings is an obstacle to lay understanding. Among 98 legal words selected from the introductory law textbook for this research, we have 63 “misunderstood” legal words.

I have selected one “misunderstood” legal term 故意 (intention) for paraphrase analysis. Downloaded sentences of 故意 (intention) show four characteristics of legal terms. First, 故意 (intention) in legal field appears as noun more frequently than that in non-legal field. In contrast, 故意 (intention) in non-legal field occurs as adverb more commonly than that in legal field. Second, the relation between 故意 (intention) and 過失 (negligence) is legal antonym, which clarifies the critical point of legal reasoning, using these two terms. Third, the relation of 故意 (intention) and 惡意 (with knowledge of) is legal synonym, which indicates niceties of the law. Fourth, 故意 (intention) works as a derivative word, which indicates that 故意 (intention) is a key word of law.

It is important to analyze word class, antonym, synonym, derivative of legal terms. These features show why the usage of legal terms is so distinctive from ordinary language. By analyzing these features, one could provide a good paraphrase of legal terms to lay people. Furthermore, it would elaborate the quality of paraphrasing to include the analysis of lexical pragmatics such as Wilson et al. (2007). More importantly, a method of interpretation should be developed for a better paraphrase of legal terms for the practical purpose. Such an approach to interpretation requires a coordinated efforts of linguists and legal experts, not the legal language battle between linguists and the legal experts of 1950s or 1980s.

6. References

- Azuelos-Atias, Sol. 2011. On the incoherence of legal language to the general public. *International Journal for the Semiotics of Law* 24: 41-59.
- Crystal, David and Derek Davey. 1969. *Investing English Style*. London: Longman.
- Gibbons, John. 2002. *Forensic Linguistics*. Oxford: Blackwell.
- Halliday, Michael Alexander Kirkwood. 1985. *Language, Context, and Text: Aspects of Language in a Social-semantic Perspective*, 2nd Ed. [1989 & 1990]. Oxford: Oxford University Press.
- Hayashi, Shuzo. 1959. 'Houbun zukuri no tachiba kara – Okubo shi no 'shindan' wo yonde' (From a position of legal legislature – Reading Mr Okubo's 'diagnosis' article). *Hougaku Seminar (Seminar on Legal Studies)* 36: 68-70.
- Kurata, Takuji. 1990. *Zoku Saibankan no Shosai (A Sequel to 'A Judge's Study Room')*. Keisou Shobo.
- Matsumoto, Tsuneo, Reiko Saegusa, Masahiro Hashimoto & Hitoshi Aoki. 2006. *Nihon-hou heno Shoutai (Law Students in Wonderland: An Invitation to Japanese Law)*, 2nd Ed., Yuhikaku.
- Mellinkoff, David. 1963. *The Language of the Law*. Boston: Little Brown.
- Okawara, Mami Hiraike. 2009. *Saiban Omoshiro Kotoba-Gaku (Peculiar Legal Language Studies)*, Taishukan.
- Okawara, Mami Hiraike. 2012. 'Japan's project to simplify courtroom language'. *Clarity* 65: 17-19.
- Okubo, Tadatoshi. 1959. 'Hourei yougo wo shindan sureba – Koubun jou kara mita houritu bunsho no wakaranikusa bunseki' (A diagnose on legal language – An syntactic analysis on incomprehensible nature of legal language). *Hougaku Seminar (Seminar on Legal Studies)* 35: 54-57.
- Okubo, Tadatoshi. 1959. 'Hanketsubun no tsuzurikata kyoushitsu – Hanketsubun wa wakariyasuku kaku hituyou wa naimono ka' (A writing guide for court judgment – Isn't it possible to write a judgment more readable?). *Hougaku Seminar (Seminar on Legal Studies)* 38: 72-75.
- Shizume, Yasuo. 1986. 'Saibankan no kokugoryoku wa chuugakusei name dana' (I wonder if judges' verbal attitude is on the same level of that of junior high school students). *Jurist* 853: 87.
- Tiermsa, Peter. 1999. *Legal Language*. Chicago University Press.
- Tanaka, Mari and Yumi Miyazaki. 2013. 'Houritsu yougo to nichijougo no gogi no chigai to renzokusei' (The difference and continuity of legal-term meanings and ordinary-term meanings). Paper read at Dai 32 kai Shakai Gengo Gakkai kenkyuu taikai (The 32nd Meeting of Japanese Association of Sociolinguistic Sciences).
- Wilson, Deirdre and Robyn Carston. 2007. A unitary approach to the lexical pragmatics: relevance, inference and ad hoc concepts. *Pragmatics*, Ed. N. Burton-Roberts, 230-259. London: Palgrave.

