

POLYSEMY IN CONTRACTS ESTABLISHING AN EMPLOYMENT RELATIONSHIP UNDER THE LAW OF ENGLAND AND WALES – A CASE STUDY

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Abstract: In the first part of the article, by way of an introduction the unique features of the style of English legal language as well as the term polysemy from the cognitive linguistics point of view are presented. The second part demonstrates the analysis of the semantic frame of contracts establishing an employment relationship, its obligatory and optional sections (*inter alia: termination of employment, probationary period and confidentiality*). Next, the key polysemic words and expressions appearing in the contracts in question together with examples of their legal and colloquial meaning (*to terminate, a termination, to second, a remedy, to settle, to govern* etc.) are discussed. Subsequently, the paper concentrates on both polysemic words and expressions supporting key expressions as well as other polysemic expressions (*amalgamation, a schedule, to incorporate*) to present their meanings in various contexts. The research was carried out on ten model employment and internship contracts as well as secondment agreements under the law of England and Wales by virtue of which an employment relationship is formed.

Abstrakt: W pierwszej, wprowadzającej części artykułu przedstawiono charakterystyczne cechy angielskiego języka prawa oraz pojęcie polisemii z punktu widzenia językoznawstwa kognitywnego. Druga część artykułu dotyczy analizy ramy semantycznej umów, na mocy których powstaje stosunek pracy, jej elementów obligatoryjnych i fakultatywnych. Następnie przedstawione są wyrażenia polisemiczne występujące w tego typu umowach wraz z przykładami ilustrującymi ich wieloznaczność. Wyrażenia polisemiczne zostają podzielone ze względu na funkcję, którą pełnią w umowie (wyrażenia będące częścią normy prawnej, wyrażenia występujące w przepisie prawnym oraz pozostałe, pojawiające się m.in. w definicjach czy nagłówkach). Wyniki badania wskazują na to, że większość wyrażen polisemicznych stanowi element normy prawnej oraz, że niektóre z badanych wyrażen stanowią nie tylko termin prawny, ale równocześnie są też fachowymi terminami medycznymi i lingwistycznymi. Badanie zostało przeprowadzone na 10 wzorcach umów o pracę, umów o praktykę oraz umów o przeniesienie, stanowiących typowe umowy rządzące stosunek pracy.

English legal language

The legal language of every legal system differs significantly from everyday language used by non-lawyers. What is more, there exists also the distinction between the normative language (język prawny) and the language of the jurists (język prawniczy). It

is vital to separate the *legal language* from *judicial languages*, the latter being languages used during legal proceedings such as trials, questioning, etc. (Witczak 1996, 413).

Legal documents have everything to do with culture. They are pregnant with it, which is especially true for documents from countries with different legal traditions (Obenaus 1995, 249). As a consequence, comparing legal languages bound to legal systems belonging to different legal traditions may lead to what Smith describes as “culture clash” (Smith 1995, 179).

Each legal system “has a vocabulary used to express concepts, its rules and arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society” (David and Brierley 1985,19).

The following general characteristics of English legal language were formulated by Witczak-Plisiecka (Witczak-Plisiecka 2004): some words common in language acquire special technical meaning when used within the system of law; wide retention of archaic relicts (usually Norman French or Latin) and formal old-fashioned words to create specialised terms and formal old-fashioned words (e.g.: high frequency of deictic words and expressions; specific, or even unique, use of English modal verbs, especially of *shall* which in English legal writing has been traditionally used with the directive function); unique features of style (such as very long sentences containing numerous provisions, action rules, stipulation rules, definition rules, complex nominal and prepositional phrases and a higher frequency of using passive voice and the language aiming at being impersonal, precise, rational, authoritative, decontextualised).

Polysemy

In accordance with the list of terms constituting the appendix of „Lectures in Cognitive grammar” by Langacker, polysemy is the phenomenon where two or more semantic values have the same phonological representation. It may seem that every notional category is represented by one language category – one word and that one word represents one notional category – one meaning. But words have usually more than one meaning. A word which has several different meanings combined with one another is a polysemic word (Tabakowska 2001, 46).

Polysemy “the association of two or more related senses with a single linguistic form” (Cuyckens and Zawada 1997, xi), is ubiquitous in natural language and therefore deserves linguists’ attention. Although the importance of the question of polysemy for the semantic study of language was already recognized in the historical-philological tradition, it is not until recently that polysemy has become a central issue again in linguistic semantics. Polysemy has certainly become a core area of study in cognitive linguistics (Cuyckens and Zawada 1997, xi).

The importance of the study of polysemy is, evidently, not confined to the field of cognitive linguistic semantics. Indeed, polysemy has also received considerable attention in psycholinguistics, in cognitive psychology and in artificial intelligence and computational linguistics. For computational linguistics in particular, polysemy continues to present a real challenge, in that word sense identification/disambiguation in natural

language processing is still not unproblematic. It seems safe to say “that the study of polysemy is of fundamental importance for any semantic study of language” (Cuyckens and Zawada 1997, xi).

Research

The objective of the paper is to examine the functions (in a contract) and meanings of legal terms constituting polysemic expressions appearing in contracts establishing an employment relationship. The research was carried out on ten model employment and internship contracts as well as secondment agreements under the law of England and Wales by virtue of which an employment relationship is formed. Methodologically the research is based on the cognitive linguistic approach which views polysemy as a normal, expected state of affairs in lexical semantics (Taylor 2003, 36). Components of the contracts in question are as follows:

1. name of contract
2. name and data of company, data of employee
3. start date and duration of contract
4. termination of employment relationship
5. probationary period (optional component)
6. job title and duties
- 6a. secondment (only in secondment agreements)
7. place of work
8. remuneration
9. expenses incurred by employee
10. working hours
11. holidays
12. company sick pay or statutory sick pay
13. prohibition to work in any other company or in any other company competing company in relation to the company/ obligation to notify about any other work
14. confidentiality
15. disciplinary and grievance procedures
16. collective agreement (optional component)
17. personal data protection
18. final provisions
19. positions of parties, signatures

In the chart below there are listed polysemic words and expressions appearing in contracts establishing an employment relationship, being characterised according to their function in a clause. Key words and expressions constitute a crucial part of a legal norm (hypothesis, disposition and sanction), supporting ones occur in the articles but do not create a legal norm, other polysemic words and expressions appear in definitions, headlines etc. The function of a given expression in a clause was consulted with lawyers. Polysemic key words and expressions are marked with number one, polysemic words

supporting key words and expressions – number two, other polysemic words and expressions – number three.

No.	Word or expression	Contract component	Function/significance
1.	to incorporate	2.	3.
2.	to terminate/termination	4.	1.
3.	to expire/expiration	4.	1.
4.	to breach/a breach	4.	1.
5.	to second/secondment	6a	1.
6.	a schedule	18.	3.
7.	a provision	all	3.
8.	a benefit	8.,12.	1.
9.	a notice	4.,18.	1.
10.	to remedy/a remedy	4.	2.
11.	an amalgamation	4.	2.
12.	an amalgamation	--	3.
13.	to authorise/authorisation	6a.	2.
14.	to govern	18.	1.
15.	to settle/a settlement	18.	1.

From the chart above, it can be stated that key words and expressions constitute more than 53% of polysemic words and expressions occurring in the contracts, while supporting and other polysemic ones make up only approximately 20% and 26% respectively. Most of polysemic words and expressions (50%) appear in the contract clause concerning termination of an employment relationship and (36%) in final provisions. Significantly fewer polysemic expressions appear in the remaining contract components. On the basis of the short analysis, it would seem that polysemy is the characteristic of the expressions constituting a legal norm. Furthermore, the results indicate that in one of the indispensable provisions of a contract (concerning its termination) the phenomenon of polysemy is the most frequent.

Presented below are the examples of the meanings of the polysemic words examined. Starting with the legal meaning, the paper subsequently shows their various meanings in other branches i.e. medicine and linguistics.

1.to incorporate

Legal term:

The agreement was made on X between Y a company incorporated in England and Wales.

Incorporating a small business has been faster, easier or more affordable.

Colloquial meaning:

The Union Government, however, had military necessity and economic reasons to incorporate the territory into the Union after the war.

Agencies must incorporate the plan/schedule in their 2005 Technology Plan.

When buying a home, you cannot incorporate a car loan into the mortgage loan.

2. to terminate, termination

Legal term:

Either Party A or Party B may terminate this Agreement on the expiry of not less than X month(s) prior written notice given to the other.

Nothing in this clause gives you any rights to continuation of existing benefits following termination of your employment.

Medical term:

Recently, several authors have reported the use of misoprostol to terminate pregnancy.

As the numbers show, there are many women who decide that a termination is the best option in their circumstances.

Colloquial meaning:

X terminates merger discussion with Y.

This train terminates in Oxford.

The deadline for this translation terminated on 3 February 2007.

Linguistic term:

-tropism(-tropism) is a word termination affixed to a stem denoting the nature of the stimulus (phototropism) or the material or entity for which an organism or substance shows a special affinity (neurotropism), usually applied to nonmotile organisms.

3. to expire, expiration

Legal term:

This act expires July 1, 2014.

He has no reasonable expectation of continued employment beyond the expiration of his contract on August 31, 1979.

Colloquial meaning:

The trial version of X Application Server V6.0 Plug-in Edition license will expire 60 days after the first invocation of Plug-in utilities.

He/she will be the keeper of the corporate seal and at the expiration of his/her term of office turn over all items and properties belonging to the club to his/her successor.

He is a Class III director and his term expires in 2010.

Medical term:

The patient expires into the reservoir tube. Toward the end of expiration, the bag fills and positive pressure opens the valve, allowing expired gas to escape.

A spirometer can measure the volume of expired air before and after exertion.

Expiration is the act of breathing out, or expelling air from the lungs.

In contrast, all eight untreated rats expired before the cocaine infusion was complete.

Nursing staff in attendance at the time of patient expiration should notify the house staff officer.

4. a breach

Legal term:

During the continuance of this Agreement Party B shall not do or omit to do anything which would cause Party A to breach any of its obligations to the Employees.

Either party has the right to terminate this Agreement forthwith and without liability by notice in writing if the other party commits a material breach of any of the provisions of this Agreement and fails to remedy such a breach within seven days of

receiving a written request from the innocent party specifying the breach and requiring it to be remedied.

Colloquial meaning:

The report indicated that a competitor may have committed a gross breach of good manners and sportsmanship.

Less than three months ago-in the immediate aftermath of the breaching of the Berlin Wall –the Chancellor’s closest aids were predicting that five to eight years may still be needed before unity become a reality.

X ends breach in relations with Y.

A claim for breach of confidence will arise if (a) the information concerned has the necessary quality of confidence; (b) it is communicated in circumstances imposing an obligation of confidence; and (c) there has been an unauthorised use of the information to the detriment of the owner.

5. to second, a secondment

Legal term:

XXX means those employees employed by Party A who are to be seconded to Party B.

Party A will second the Employees to Party B.

Party B may notify Party A that it requires further or additional services to be provided in which case the Schedules may be varied by agreement to provide for further secondments and/or the provision of further or additional services.

In 1997, he was seconded for twelve months to the United Nations Police in Bosnia and Herzegovina.

During his secondment Michael will return frequently to New Zealand, keeping in touch with the New Zealand firm and clients.

Colloquial meaning:

Member X seconded the motion.

Mr. X proposed speaking rights for the observers. Mr. Y seconded him.

One day one of his friends asked him to second him in a fight.

6. a schedule

Legal term:

The names are set out in Schedule A.

In such a case the Schedules may be varied by agreement to provide for further secondments.

Colloquial meaning:

The official schedule is the printed version available from the Secretariat of the Commission.

7. a provision

Legal term:

Either party has the right to terminate this Agreement forthwith and without liability by notice in writing if the other party commits a material breach of any of the provisions of this Agreement.

Either party has the right to terminate this Agreement forthwith and without liability by notice in writing if the other party commits a material breach of any of the provisions of this Agreement and fails to remedy such a breach within seven days of receiving a written request from the innocent party specifying the breach and requiring it to be remedied.

What were the exact provisions of the treaty of Tokyo?

Be sure to consult an attorney to make sure you include all the necessary provisions in your license agreement.

Colloquial meaning:

The European Commission has adopted a proposal on the provision of food information to consumers.

Effective joint working between the X and local authorities is essential to ensure the provision of high-quality community equipment services.

8. a benefit

Legal term:

Party D shall continue to pay to the Employees their salaries and other **benefits** in accordance with their contracts of employment.

Colloquial meaning:

He gives me the benefit of his advice.

9. a notice

Legal term:

Either party has the right to terminate this Agreement forthwith and without liability by notice in writing if the other party commits a material breach of any of the provisions of this

Colloquial meaning:

Later in the day a notice was hammered to a tree.

10. a remedy, to remedy

Legal term:

Either party has the right to terminate this Agreement forthwith and without liability by notice in writing if the other party commits a material breach of any of the provisions of this Agreement and fails to remedy such a breach within seven days of receiving a written request from the innocent party specifying the breach and requiring it to be remedied.

How to remedy infringement of contract agreement?

Colloquial meaning:

The reason why the daily seafood diet is such a powerful remedy for many kinds of cancer and so many 'incurable' diseases is very simple.

Summit produces plan to remedy deficiencies in the care of cats.

11., 12. an amalgamation

Legal term:

Either party has the right to terminate this Agreement forthwith and without liability by notice in writing if the other party enters into liquidation either compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation without insolvency).

Amalgamation which allows two or more companies to merge into one of the companies or form a new company is a major amendment to the Companies Act 2005.

Colloquial meaning:

It is difficult for several tenaciously observed traditions to exist in each other's presence without some degree of amalgamation.

13. to authorise, an authorisation

Legal term:

Neither party shall have authority or power to bind the other, to act as agent of the other or to contract in the name of or create liability against the other in any way or

for any purpose save as expressly authorised in writing by the other from time to time.

I hereby authorise you to disclose information relating to me to the Dealer / Vendor.

Colloquial meaning:

I understand that the interview(s) or photo session(s) are being carried out upon my consent and authorization.

14. to govern

Legal term:

This Agreement should be governed by, construed and take effect in accordance with English law.

Contracts for sale involving goods are governed by Article 2.

Colloquial meaning:

The Parliament governs the country.

These are the immutable laws the govern the cosmos.

How do genes govern personality?

Govern Your Temper!

Linguistic term:

A transitive verb governs a noun in the objective case.

15. to settle, a settlement

Legal term:

The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Agreement (including, without limitation, claims for set off or counter-claim) or the legal relationships established by this Agreement.

Under the terms of the settlement, X will receive a cash payment.

Colloquial meaning: (several meanings, *inter alia*:)

He settled comfortably into his big chair.

Emigrants from Italy in the earliest period of emigration settled in New Orleans.

In this book the territorial restrictions on the settlement of Jews in the Russia Empire are discussed.

From the examples above, it can be concluded that more than 14% of polysemic expressions examined constitute simultaneously legal, medical as well as linguistic terms. Expressions functioning as legal and medical or legal and linguistic terms make up 7% of expressions in question each. On the basis of these findings, it can be stated that different meanings of legal terms being polysemic expressions hardly ever function in more than one scientific branch (e.g. law and medicine).

Summarising, the results of the research indicate that the words and expressions constituting a crucial part of a legal norm make up more than a half of polysemic words and expressions occurring in the contracts establishing an employment relationship under the law of England and Wales. Moreover, interestingly, different meanings of legal terms being polysemic expressions sometimes function in more than one scientific branch e.g. the expression *to terminate/termination* is simultaneously a legal, medical and linguistic term.

- Cuyckens, Hubert, and Britta Zawada, eds. 2001. *Polysemy in Cognitive Linguistics: Selected Papers from the International Cognitive Linguistics Conference*, ix–xxvi. Amsterdam: John Benjamin's Publishing Company.
- David, Rene, and John Brierley. 1985. *Major Legal Systems in the World Today*. London: Stevens.
- Langacker, Ronald. 1995. *Wykłady z gramatyki kognitywnej*. Lublin: Wydawnictwo UMCS.
- Obenaus, Gerhard. 1995. The legal Translator as Information Broker. In: *Translation and the Law*, ed. Marshall Morris, 247–259. Amsterdam: John Benjamin's Publishing Company.
- Witczak, Iwona Maria. 1996. The legal performative and the language of legislation. In: *Translation and Meaning*, ed. Lewandowska-Tomaszczyk, Barbara and Marcel Thelen Barbara, 413–418. Maastricht: Rijkshogeschool.
- Witczak-Plisiecka, Iwona Maria. 2003. Modulation of meaning in English legal texts. In: *Research and Scholarship in Integration Processes*, ed. Lewandowska-Tomaszczyk, Barbara and Elżbieta Oleksy, 199–209. Łódź: Łódź University Press.
- Witczak-Plisiecka, Iwona Maria. 2004. Legal Documents-Function-Oriented Communicative Acts. Paper presented at the international conference Language and law: legal communication in an interdisciplinary perspective, December 2–4, in Warsaw, Poland.
- Smith, Sylvia. 1995. Culture Clash: Anglo-American Case law and German Civil Law in Translation. In: *Translation and the Law*, ed. Marshall Morris, 179–197. Amsterdam: John Benjamin's Publishing Company.
- Tabakowska, Elżbieta. 2001. *Kognitywne podstawy języka i językoznawstwa*. Kraków: Universitas.
- Taylor, John. 2003. Cognitive models of polysemy. In: *Polysemy, Flexible Patterns of Meaning in Mind and Language*, eds. Nerlich, Brigitte, Zazie Todd, Vimala Herman, and David Clarke, 31–48. Berlin: Walter de Gruyter GmbH & Co. KG.

