

The Language of the Legal Text ; A Comparative Linguistic Study

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Abstract : Terms have a great importance for any language, especially in showing rules or judgments, so semantics is selected to be the title of this study. The study focuses on the terms of the legal text, so it is entitled (Between the linguistic and the legal text/A comparative study); the legal text is preceded by the linguistic term because the study is specialized in Arabic language (linguistic branch), hence we refer to the linguistic lexicons and the semantics books whose authors are called (Semantics Linguists). Then we compared them with the writes of legislators and scholars whom we called (The authors of the texts or The drafters). Legislators and legalists are aware of the impact of these connotations as they concerning the resulting judgments. Since that legislation terms have a deep connection with people life, drafters were so careful to select the accurate terms so we refer to semantics and to the word and its meaning. There is no doubt that the words are not indicative in their meaning in themselves or with the aid of a context, so we put that according to what was known to the jurists, such as flexible ,vague and confused. We have chosen two models of Iraqi law, one of which is known as the Civil Law and the Penal Law. The results could be summarized as following: legislative terms significance is affected by the terms significances for the semantic linguists, Usulis and logicians; the research reveals this point in making the text a means to reveal the term significance. For the terms(speech and situation), which are the products of the semantic linguists, we found them for the drafters. One of the aspects of the semantics effect is that they have a special significance for each term, while for the Usuli effect we have the terms which they put for the word meaning, and for the logicians we have the external issue which means terms significance according to the circumstances.

Keywords: semantics, semantic linguists, drafters, formulating(drafting), text.

1. Introduction.

With The Name Of The Mighty Merciful God.

For many centuries ,the linguistic lesson was inherent to the Qur'an, which was and still is inexhaustible. For it is from the words of His Almighty God. The research of the Language sciences on all levels was not limited to holy the Qur'an, it extended to include poets' poems on different times and places. So they searched the language of those poems as well as their research of the context of speech and the scientists writings. This effort was appreciated in every detail for the bright image that it presented of the Arabic Language. However, there are texts that are of great importance in our lives but didn't get enough share of linguistic research which has been confined to the search of people who did not specialize mostly in linguistics. These texts are the legal texts which have the direct impact on people's life in various fields. Hence this research is an attempt to consider the linguistic structure of the legal text and compare it with linguistic texts and identify the linguistic thinking among the authors of those texts, especially that we found linguistic rules that they take as a starting point for the elaboration and interpretation of their texts, including those rules in the text of the Civil Law1-"The point in contracts is for purposes and structures ,not for terms and structures.2-"The origin of speaking is the the truth ,but if the truth couldn't be possible, the metaphor is the solution."(1), and other issues that were the motive for this research.

The research begins with the explanation of the term(text)for the linguistics and jurists. After we reached to the significance of this word we moved to the concept of drafting and search for what it is intended, by getting to its concept; we must get a conclusion of identifying the significance of (drafting the text).Then we identify the foundations of drafting and the ambiguity or the confusion of their meanings. We compare what the linguists adopted in drafting their sentences and what the jurists adopted in drafting their texts, reinforcing it by mentioning evidences from the Civil and Penal Law texts. The reason for choosing these two laws is that the first law concerns the organization of the individual financial and family affairs, and the second defines the acts prohibited by law and imposed punishment on them.

The results are presented in the Conclusion. In brief; this research is only an attempt to study the legal text in a linguistic study.

2. The Text in linguistics:

AL-Khaleel (d. 175h)said:(I talked to someone so I addressed it)(2),Also Ibn-Mandhoor mentioned that the text is doing a thing , and the text of the speech is to mention it's source, and all that is shown is texted also. Ommar Bin Dinaar also said "I didn't see a man who can mention the real source of the text like AL-Zuhri"(3).

The Text Idiomatically.

It will be long talk if we wanted to collect the definitions set by the scientists of language at different times .Because the linguistic researchers put many definitions for the term(text),but we will only prove some of them according to our study.

The Text is((a paragraph which has a connotation and function and then a fruitful piece of speech))(4), and another researcher said that (text) is ((any written or spoken item whatever its length provided that it is integrated))(5). A third declaration said ((Text is a series of sentences, each of which benefits the listener))(6). If we had a closer look to the previous definitions we find that all the scientists agreed upon defining the concept of the text in terms of essence, but they differed in its definition in terms of appearance; where it is noticed that they agreed that text is (a paragraph/a series of sentences)and the paragraph is nothing but a series of sentences. This paragraph must be fruitful, completed, beneficial and all these terms means :it is a useful and meaningful sentence.

3. The Text for the Jurists.

Jurists have dealt with (texts) for a long time, and they used the word(the article)as a synonym for the word(text). Law consists of many articles and in fact the two words(article/text)have no synonymous but they are two words added to each other ,but it is customary for the lawmen to use either the word(article) or (text).

If we looked at what they proved in the definition of the (text of the article)we find them wanted with it(the smallest independent linguistic unit comes in the law and contain a legal rule of any imposition and a binding provision)(7).

There is another definition for the word (text) that is (The text is phrases with limited words intended to mean a special meaning ,which is written or spoken used by people literally, the recipient diagnoses from them intellectual connotations about a specific meaning, and concludes results, in another words; it is a formula of defined words carry a meaning and transmitted to people by reading or hearing).(8).

The two definitions benefit the same contact, although they differ in expression.

To say that the text is identified words given certain meaning ;indicates the same connotation in the definition which say that the text is the smallest linguistic unit with a legal rule. So the legal rule definitely gives a specific meaning.

Another researcher said ((the text "the legal text" is not a series of sentences which means it is not only a grammatical unit baggier than the sentence and different from it in size ;but a unit of different type with a trading connotation ;and it is the unit of the meaning in the context)(9).

Definitely this definition united the linguistic and the legal texts, in addition the (definition) is not different from the content of the previous definitions ,but different in form. The summery is that both of the (text) and (article)or (the text of the article)is a linguistic unit which carries a specific connotation or gives a specific judgment whether written or audible regardless of length or shortness.

From the previous explanation we concluded that the text is a useful phrase. As for the approximate summary at lawmen is(a linguistic unit which carries a specific connotation or gives a specific judgment whether it is written or audible regardless its length or shortness ,and both definitions (the linguists &the jurists definition)indicate one meaning, so the linguistic unit is a useful phrase ,and this useful phrase may be audible or written .By gathering the two definitions ,we can say that the linguistic text is (the linguistic unit which indicates a meaning),and the legal text is (the linguistic unit which indicates judgment).

Dr. Saeed Bayumi has found a similarity between the (legal text) and the (Verses of al Qur'an)through saying(If we may liken it ,the positive lawmaker mimics in building the legal text in a coherent manner consistent with the miraculous Qur'an text. As if he wanted the legal material to resemble the textual verse in Qur'an in terms of its independence formally and its association with other items morally, and each article represents a separate text within a larger context, the Qur'an.))(10)

The similarity between the Qur'an and the text is as follows:

*Qur'an's articles connect with each other to give a specific connotation.

*The legal texts or articles connect with each other to give a specific connotation also.

Sentence in the concept of the linguists & Jurists

A sentence is a term that has been the subject of wide scientific controversy, and this debate is about defining its concept and characteristics. As this text say((what silence is good of it and it is useful for the

addressee))(12).As for Ibn-Jini the sentence is (speech utter independent, it is restricted to its meaning which called by grammarians "sentences")(13).

As for the modernists; Di Soucer said(A sentence is the best example which represents structure and context ,it is only included in speech but not language)(14).

Dr.Fadhil Al-Samarai wrote a book called (Arabic Sentence & Its Meaning),explained in it everything concerns sentence in terms of its definitions and details. He started his speech by saying(Sentence must give a meaning ,otherwise it was in vain, if words arranged without any meaningful connection ;that is not a speech))(15).

One of the researchers collected in his definition of the sentence what the ancient and the modernists proved and said(It is the least amount of speech gives the listener an independent meaning, whether this amount is of one word or more. The sentence has no fixed length, but it ranges from very long and very short, because what is important here is the attribution in which the sentence is structured, and it has no maximum adherence to it where it is a linguistic compound in Arabic tongue composed of two components: The predicate and predicative which they appear in the various models of diagnostic speech in a very diverse variety. It contains basic synthetic structures, each of which is similar to the nucleus))(16).

In a summery ,a sentence has two features: the first that it has no specific length, and the second is the connotation of the meaning. and these two features include the whole sentence ;verbal or nominal.

Now we move to the jurists to see the convergence and spacing with the linguists; it should be noted that the term (sentence)has not been widely circulated among the jurists, but remained locked in specific studies and didn't use in common ,resulting in the lack of a clear definition of the sentence, and the lack of circulation led to a lack of clarification of what is intended.

In spite of this lack ,we find some of the jurists took care of dividing the sentence more than taking care of defining it and they identified a sentence that was appropriate and formulated the legal rule.

The following is some of their understanding of the sentence((the legal sentence mission is to deliver a message to two persons or more clearly , transparently and in a style moves away from interpretation))(17).This statement is very brief, and the author explained the task of the sentence rather than definition.

In another location ,a researcher dealt with the details of the sentence, indicating its sections and characteristics of each. So he mentioned that the legislative sentence composed of expressions of meaning. And in accordance with what was approved by the workers in language and grammar in terms of the order of the verb and the subject and in terms of their form.(18).From this text ,the researcher has focused on two things(1)The legal sentence must be meaningful,(2)to be according to the linguistic and grammarian rules. It is obvious that the researcher meant by the connotation of meaning ,is to formulate the sentence in a way that deviates it from explanation and interpretation.

As for the accordance of the linguistic and grammarian rules, is the adoption of words that do not bear the formulation of morphological (morphological construction) with interpretation and diligence. It is clear from the approval of the rules of grammar is the order of sentence away from the permissibility of delay and the need for submission and what grammarians used to deal with.

The jurists divided the sentence into three divisions:

*The first is the (simple sentence):which consists of a verb and a subject, and this kind of sentences ,although it is a useful phrase in which the two elements of clarity and accuracy is achieved, it is not suitable for legislative purposes, because it is limited only to the (verb and subject)and doesn't contain details and restrictions that restrict most of its parts.

*The second is (Compound Sentence):which consists of two simple sentences or more, and these two sentences are equal in their importance which means: of two independent structures does not depend on each other, and consists of two verbs with two subjects or more , "what means that it has two ideas or two topics". This kind of sentences is not suitable for legislative sentence drafting, because the legislative sentence should deal with only one idea.

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The third is (complex sentence) which consists of independent structure with a second one or more which is dependent, and the connection between these two structures is by using (and/or).What means it consists of a main

sentence followed by another one or more to restrict the intended meaning .This means that the third kind is the most suitable kind for legislation. And it is better for the legislator to focus on using the third kind and avoid using the other two kinds(the simple & the compound)(19).

By going back to what the linguists & Jurists required to achieve the meaning of the sentence to indicate the compatibility and contrast between them; we say:

The sentence at linguists	The sentence at jurists
Has no specific length	According to the linguistic and grammarian rules
Connotation of meaning	Connotation of meaning

Through these two conditions and by reading the texts It is clear it became clear that the linguists did not restrict themselves with the length or shortness of the sentence ;and that is because they have words or terms achieve the meaning only in one word.

As for the jurists ,they put this limits implicitly through their division for the sentence, the jurists do not need one word to achieve the connotation, but they need a sentence which carry an integrated judgment of all aspects.

As for their reference to the sentence syntax for linguistic and grammarian rules is much more important because it indicates a proper understanding.

As for linguists ,they did not refer to it because it is the essence of their work, but the second limits is the (connotation of meaning),they have subscribed to the text, since this limits was important ,each of them took care in the drafting of the sentence or text and the way it is built to benefit the connotation that the speaker or legislator wants and understood by the addressee.

Through the above explanation to the concept of the (text) or (sentence) at linguists and jurists, in addition to the concept of the (text) and (article)at the jurists, we conclude that linguists meant by (text) or (sentence) approaches from what the jurists meant by (text) or(article),or by adding one to another (the text of the article),So we will use the expressions (text/article/sentence)as united terms in the connotation for the same thing that is (linguistic structure which indicates a meaning or a judgment).

4. Drafting for Linguists & Jurists

Drafting for linguists.

Drafting in linguistics:

AL-Khaleel (D175h) said(Drafting is the craft of the draftsman, and he (drafted; drafts, drafting) and the thing is drafted,)(20).

Ibn-Mandhoor (D711h)declared that drafting is from drafted which it is the past participle of the word draft, and when say a drafting man ,we mean he is a liar. As they said someone drafts lying(a metaphor),and this is something of good drafting which means :good work.

It is said "he drafted poetry or speech, which he wrote and arranged, it is also said that "draftsmen are the most liar people". Also said "Those who paint and draft speech ,that is ,change it. And someone is handsome ,that is, God is a good drafting .(21).

From these two texts ,we conclude that "drafting" is a craft, and each craft requires a high skill. What is important in the text of Ibn-Mandhoor is his declaration that "drafting" means: Beauty and arrangement, whether of work or speech ,therefore we can say" Drafting is the arrangement of speech and good writing".

The Arabs concerned a lot with drafting their speech and good writing, because writing in a beautiful way eliminate confusion and achieve a good understanding .But through our following up the term drafting ,we found that the linguists used the term(far from confusion)to give the meaning of "drafting". Because the confused language is invalid to be understood(22) This led us to the conclusion that the limits of confusion and drafting are

two concepts that benefit one meaning. As Abu-Hilal AL-Askari said ((You should make your words the same, and identical guidance for its inability, and do not disagree with the limits and incompatibility of the framework)(23).

Drafting for jurists.-

Drafting is(Preparing the written legislation on a direct example with beauty ,arrangement and decoration)(25.Also said(It is the tool which carry the legal thinking from the internal space to the external one, because it is simply a tool to express an underlying idea to become a social truth dealt with)(26).

The legal drafting also defined as(Put the provisions to be provided in the best possible way and form)(27).There is another definition focused on that drafting concerned with choosing the words and the way of expressing them ((The meaning of Drafting goes to the constructor and arrangement of words and expressions in a special way which express the author's point of view)(28).

Through extrapolation of the previous definitions ,they included specific concepts like(straight example/beauty/arrangement/the best possible way/words order) which AL-Khaleel and Ibn Mandhoor declared according to the two linguistic definitions.

The linguists mentioned that must be a fruitful ,integrated benefit from the text.

By this the linguists and the jurists completely agreed on identifying the meaning of drafting((It doesn't go beyond the process of collecting, coordinating and linking vocabularies and legal expressions, so comes as a complete constructional sections, expressing specific meanings is precisely the idea that has moved from mind to physical reality to acquire a physical entity written in a language understood by the addressee))(29).

The jurists differentiated between two methods of drafting the texts (sentences):The first was called (Rigid way) and the second was called (the flexible way).This division is built on their realization that the vocabularies of the Arab language carry connotations which may sometimes narrow and may expand depending on the circumstances of the situation and the denominator.

These two methods adopted by the jurists will be introduced as follow:

*The Rigid drafting: The content of the sentence(text/article)is expressed in a way that cannot be interpreted or explained ,through the adoption of specific words that do not accept any interpretation. Perhaps the dominant feature of the legal texts lies in this method of drafting ;especially texts with direct declaration with numbers as in the 106 article from the civil law((puberty is eighteen full years)).Also what came in the 171 article ((He shall be punished by imprisonment for a period not exceeding five years and a fine not exceeding five hundred dinars....)),the language of these two texts is clear with no room for explanation or interpretation; therefore it is called "rigid drafting".

*The Flexible Drafting: In this way ,the content of the sentence is expressed in a way that tolerate explanation and interpretation through adopting words and expressions in board meaning and leaves the determination of connotation to the circumstances .

The texts which carried the above meaning is the word(Night)as in the 177/2 article from the civil law ((If the sale of this lobe as a red sapphire appeared to be yellow....The sale is suspended on the leave of the buyer)).

As for the penal law ,the article 44/2((Entering at night in a haunted house or an annex)). Both texts concluded the term(Night) ,and it was a reason to begin a diligence to determine the night time: Some said "it is the period of time when darkness hangs which starts from the absence of twilight and ends at dawn. And it may mean the astronomical meaning which means: the period between the sunset and the sunrise.

A third opinion mentioned the (Night) is the intensity of darkness which the thief seizes to execute his criminal plan(30).The frequent opinions in determining the exact meaning of a vocal text is what made it flexible and diligent.

Unsurprisingly, if we find the jurists have formulated their sentences in two ways: They made the first non-diligent interpretation, and the second is the opposite. So these two ways in drafting sentences (texts)are of the postulates of the Arabic Language.

As Abdalqadir Al-Girgani said in " Dala'il Ali'jaz" ((Speech is of two types: one when you get appoint from it directly like when you mean to tell about "Zaid"for example to go out of truth; Zaid went out..... ,and the second

is when you do not get the point of it only by the connotation of the word itself ,but it refers to its meaning at language))(31).

In the book of definitions .the sentences which carry more than one meaning ,called (the customary drafting)which means((What souls settled on by the testimony of minds, and received by the natures with acceptance))(32).

This drafting results of proving the meaning in the mind about the word intended to it, is called the "the original drafting"(33).

As for the second hit of drafting which leaves the space for interpretation and diligence ,open is called(second-drafting)or (marginal drafting)or(the shadows of meaning);all these were defined by Ibraheem Anees by saying((The marginal drafting is that shades differ according to people , their experiences , their moods, their bodies structure, their heritage from their parents and grandparents, and it is for one individual from a social environment suggest shades of drafting which may doesn't notify by the other from the same environment, because their experience with the word is different))(34).

The summery is that linguists and jurists have the same opinion of adoption two kinds of drafting sentences or texts, as for the nomenclature varied depending on the language familiar to each of them.

For more clarification we simply put the following diagram :

The linguists	The Jurists
The original drafting	A rigid text
T The sub-drafting/the marginal drafting/the shades of the meanings	A flexible text

5. The Conclusion

1-Idomatically: What the linguists meant by (sentence/text)approaches a lot from the jurists wanted with the term (the text of the article),As for the term of (eliminating confusion)at linguists is In synonym with the term(drafting) at jurists, these words converge in their meanings and vary in names.

2-The jurists realized that sentences construct in three ways: The simple sentence ,the compound sentence and the complex one, which the most suitable in constructing the legal sentence ,In spite of the variety of sentences ,there are two ways in their construction: The first is the flexible one which means at linguists (second drafting or marginal drafting),As for the second way ,it is the rigid way which means at the linguists (traditional drafting).

3-The opinions of both the linguists and the jurists approached in identifying the reasons which make the legal sentences (texts) confused, they attributed this to tandem and verbal involvement, and the style of the sentence construction in terms of shortness and length.

4-The research concluded that the good drafting of sentences(texts),and the clues which clarifying the meaning are the most important solutions for avoiding misunderstanding.

5-The research concluded that the linguists did not restrict the sentence to a specific length ,because the meaning at them might be only in one word, as for hle jurists ,they have stipulated that the sentence conform to the grammarian and linguistic structures, and they need such a restriction so that the texts do not depart from the recognized rules, the other condition in which their views are equal is to indicate the meaning because both linguists and jurists want to clarify the meaning of speech.

6- Through the points that we have referred to and through following up what was dictated by the authors of the text ,shows that the books that took care of the legislation has included a lot of linguistic issues that deserve to reflect on them, in order to identify the linguistic thinking of the authors of the texts.

Not surprisingly, if we find a linguistic effort in the books of legislation, because the texts in the Arabic language and they must be written in accordance with the rules of this language. It is worthy of its authors to be sufficiently linguistic study and all of this good and desirable.

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