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Pragmatic contributions to the interpretation of a will

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ABSTRACT The ultimate meaning of a holographic will lacking all conventional indicia of sentence boundaries (capitalization, punctuation) was the subject of litigation. At the sentence level, the will was ambiguous, but syntactic and (especially) pragmatic analysis led to a clear construal of the text. The main evidence derived from an application of Grice's maxim of quantity, with support from the maxim of relevance. The linguistic analysis was echoed by the court's decision.

KEYWORDS pragmatics, wills, Grice, maxim of quantity, discourse analysis, functional syntax

INTRODUCTION

In autumn 1996 a holographic will left by a wealthy San Francisco area real estate developer was presented to a California court for interpretation. The will lacked all punctuation, did not mark sentence boundaries, had random capitalization, and was grammatically deviant. (The trial court described the will as 'somewhat bizarre', and an appellate court labelled this characterization an understatement.)

Under California law, 'a will must be construed according to the intention of the testator as expressed in that will'.¹ While the court heard extrinsic evidence – e.g., about the testator's relationships with the parties – this evidence was offered for the purpose of supporting or attacking one or another interpretation of the will.

Because the will lacks the conventional indicia of structure providing a basis for interpretation, it was a fair candidate for linguistic analysis to uncover aspects of structure which might not be apparent to the court and which might constitute evidence about the intention of the testator as expressed in the will. I was asked to analyse the will to seek such aspects of structure. I was deposed and gave testimony in court, and judging from the court's written opinion when it decided the case, it appears that the testimony was helpful. The court construed the will in accordance with the linguistic analysis and referenced my testimony as among the factors upon which its decision was based. The case may be interesting to forensic linguists and legal scholars alike, in light of the twin rules that a court is the decider of issues of law and that the mean-

ing of an operative document is such an issue, especially in the context of Lawrence Solan's discussion elsewhere in this issue of the appropriateness of, and appropriate constraints on, linguists testifying about meaning.² (However, since the propriety of a linguist giving expert testimony about how a text's structure led to the text having a particular meaning, when that meaning was the central issue in a case, was not litigated, and the appellate decision was unpublished, the case has no precedential value.³)

In this case report, I will (1) recount the history of the case, and (2) set forth the analysis I offered, as an example of a successful application of pragmatics to interpret an operative legal text.

ISSUES PRESENTED AND PROCEDURAL HISTORY

The *dramatis personae* were a wealthy unmarried testator named Sam Zakessian, his long-time girlfriend, Carolyn Davis, and several non-immediate relatives of Sam Zakessian, some from the US, some from Armenia. Under California law these relatives would take all Sam Zakessian's property if he were intestate.⁴ The estate was valued at about \$10 million.

About six weeks after Sam died, Carolyn presented a 4 1/2in. by 4 1/2in. piece of paper with handwriting, and extensive over-writing, on both sides, which she said she found among Sam's possessions. Her lawyer petitioned the probate court to probate it as Sam's will.⁵ The court, after a trial, held that the document *was* Sam's will. Figures 1–4 show what the two sides of the document looked like.

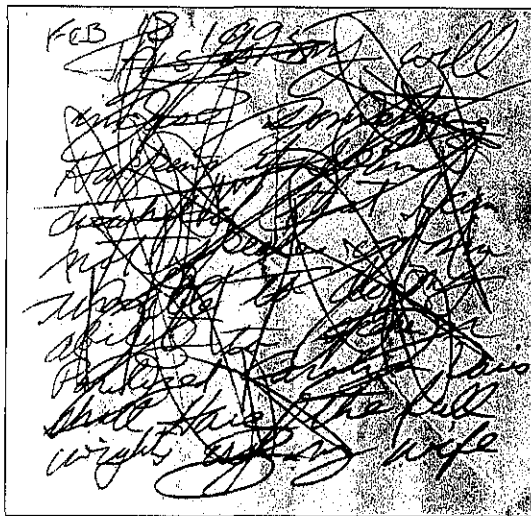


Figure 1 Side one

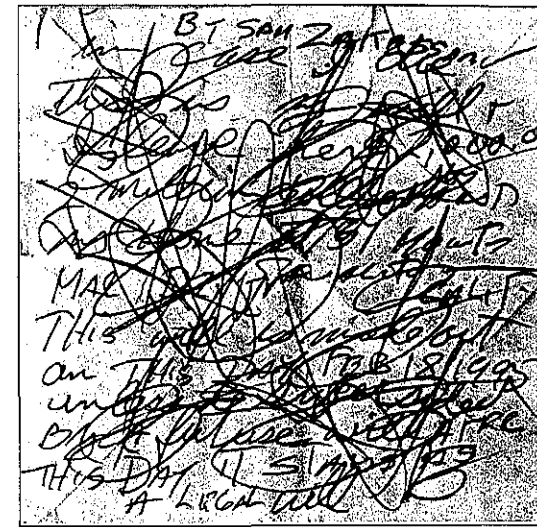


Figure 2 Side two

These two sides of the document were scanned into a computer, and the overwriting (which turned out to contain a number of occurrences of the testator's initials 'SZ'⁶) was removed with a graphics program, leaving the following:

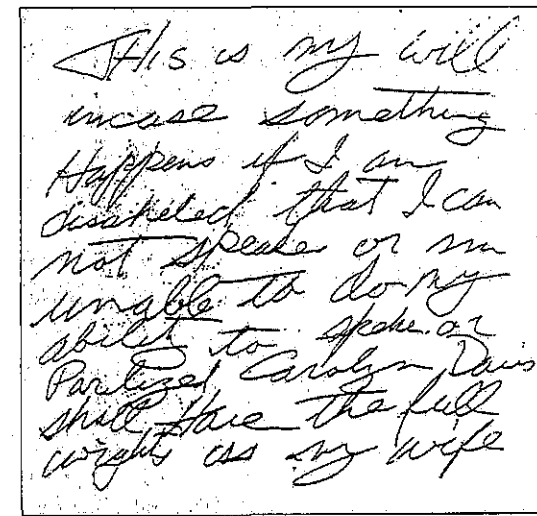


Figure 3 Side one with overwriting removed

in case I die
 this is my will +
 I leave her 2,000,000
 2 million dollars AND
 my Home at 31 Monte
 MAR Dr SAUALito CALIF.
 This will is made out
 on THIS DAY FEB 13 1995
 unless superseded
 by a future will AFRE
 THIS DAY IT STANDS AS
 A LEGAL will

Figure 4 Side two with overwriting removed

The words *BY SAM ZAKESSIAN* were removed from the top of side two based on the conclusion by Carolyn's handwriting expert that they were written later than the rest of the text. For the purposes of my analysis the text did not include those words.

One other property of the physical document bears mentioning: the fact that there appears to be sufficient space at the bottom of side one for Sam to have written the words 'in case I die', if he had wanted to. The text of the will is given in Example 1

Example 1 Transcript of the document⁷

side one

THis is my will
 incase something
 Happens if I am
 disabled that I can
 not speake or am
 unable to do my
 ability to speke or
 Parilized Carolyn Davis
 shall Have the full
 wrights as my wife

side two

in case I die
 this is my will +
 I leave her \$2,000,00
 2 million dollars AND
 my Home at 51 Monte
 MAR Dr SAUALito CALIF
 THis will is made out
 on THis DAY FEB 18 1995
 unless superseded
 By a future will AFRE
 THIS DAY IT STANDS AS
 A LEGAL will

The pronoun *her* in the third line of side two establishes the ordering of the sides as indicated in Example 1. That pronoun can only be anaphoric for the obvious semantic reason its only possible antecedent is *Carolyn Davis* on side one; and for syntactic reasons no cataphoric reference is possible here (and there is no semantically appropriate antecedent following in any case).

The question before the court, what Sam intended by writing the will, could be viewed – simplifying somewhat – as reducing to a single syntactic question: which of the two parsings given in Example 2 is correct?

Example 2 Two parsings of the will

- (a) This is my will incase something Happens(,) if I am disabled....
 Carolyn Davis shall Have the full wrights as my wife *in case I die*.
- (b) [If I am disabled ... Carolyn Davis shall have the full wrights as my wife. *In case I die* this is my will and I leave her \$2,000,00 2 million dollars and my Home.

Carolyn, arguing for the version shown in Example 2(a), contended that Sam included the possibility of a disability as the reason for writing the will. Her contention was that he wrote the will when he did because he feared a future disability which might impair his ability to prepare a will. Under this interpretation, the expression *in case I die* establishes the condition precedent for Carolyn to receive full rights as Sam's wife – that is, the right to inherit Sam's entire estate. Under California law, a surviving spouse inherits an intestate deceased's entire estate if there are no children or siblings.⁸ Sam had neither. Thus, Carolyn argued that Sam wrote a will making her the sole beneficiary as if she were his wife who stood to inherit under the laws of intestate succession. The relatives naturally made much of this contortion, pointing out that if Sam had wanted to make Carolyn the sole beneficiary he could have simply made a clear testamentary disposition by means of language like *I give my entire estate to Carolyn Davis*. However, Carolyn pointed out that the relatives' interpretation suffers similarly from the fact that if Sam had wanted to leave the bulk of the estate to them he could have done so in equally clear language.⁹

The relatives, arguing for the version shown in Example 2(b), contended that the words *if I am disabled*, etc., establish the condition precedent for Carolyn to receive full rights as Sam's wife in circumstances other than his death, and *in case I die* establishes the condition precedent for the specific bequest to Carolyn of \$2 million and the home. Under this interpretation, according to the relatives, the document gave Carolyn rights to act as Sam's wife in case he became disabled, for example to make health care decisions.

At trial, the relatives won. The court held that the only reasonable interpretation of the will was that it embodied Sam's testamentary intention that Carolyn receive only \$2 million and the Sausalito home, the first part of the text being understood as embodying Sam's intentions if he became disabled, the second part functioning as a will proper.¹⁰ Under the court's interpretation, the will distributed only part of the estate – to Carolyn – and left the balance to be distributed under the laws of intestacy. Carolyn appealed, arguing (*inter alia*) that California law favours interpretations of wills that result in complete testamentary disposal of estates rather than partial intestacy. In April 1998 the appellate court upheld the trial court's decision in an unpublished decision.¹¹ The opinion recognized the preference against will interpretations resulting in partial intestacy, but stated: 'This preference does not apply if the testator's language, taken in light of surrounding circumstances, will not reasonably admit of more than one construction. When construing a will, a court's inquiry is limited to ascertaining what the testator meant by the language used. If the testator used language that results in intestacy, and there can be no doubt about the meaning of that language, the court must conclude that intestacy was intended'.¹² The opinion then discussed the language of the will and concluded as follows: 'Because Zakessian's language, considered in light of the surrounding circumstances, will not reasonably admit of more than one construction, the preference against partial intestacy does not apply'.¹³ Finally, in June 1998 the California Supreme Court denied Carolyn's petition for review without discussion.¹⁴

LINGUISTIC ANALYSIS

For convenience, the text of the will which I was asked to analyse is set forth again in Example 3.

Example 3

side one

THis is my will
incase something
Happens if I am
disabeled that I can
not speake or am
unable to do my
ability to speke or
Parilized Carolyn Davis
shall Have the full
wrights as my wife

side two

in case I die
this is my will +
I leave her \$2,000,00
2 million dollars AND
my Home at 51 Monte
MAR Dr SAUALito CALIF
THis will is made out
on THis DAY FEB 18 1995
unless superseded
By a future will AFRE
THIS DAY IT STANDS AS
A LEGAL will

Preliminary observations

The apparent space at the bottom of side one (see Figure 1) coupled with the presence of the words *in case I die* on side two, where the specific grant of \$2 million and the house is made, offers some support to the relatives' interpretation, as the two sides of the document under that interpretation constitute distinct parts of the whole discourse, not only semantically but also physically. However, I am not an expert on spacing of handwriting so I offered no testimony about this apparent space.

Related to this observation is one that can be made about parallelism. Leaving out the initial *THis is my will*, which introduces the entire text, the text appears to contain two parallel subparts, each with two alternatives, each beginning on one side of the card, and each beginning with the words *in case*. I did not testify about this parallelism, however, because parallelism is not always present in English discourses, as evidenced by the familiar concern among composition teachers about lack of parallelism in student writing.

The relatives objected to the removal of the words *BY SAM ZAKES- SIAN* from the top of side two (see Figure 2). If the words were part of the text, the relatives' interpretation would receive some support, since it would then be difficult to read *in case I die* as part of the *full wrights* sentence on side one. But the text I analysed did not include those words.

Punctuation and capitalization

The obvious first thing to look at, the usual markers of sentence boundaries in written English, punctuation and capitalization, provide no help. In the will, there is no punctuation at all, and there are numerous occurrences of upper-case letters in sentence-medial position (even word-medial position), and at least one, and possibly several other, occurrences of lower-case letters in sentence-initial position. The one unambiguous case of the latter is the lower case 'u' in the word *unless* which begins the fourth line from the bottom on side two. The last four lines on side two must constitute a single sentence beginning with the word *unless*: *Unless superseded by a future will after this day it stands as a legal will*. Attempting to position the 'unless' clause as part of the preceding sentence results in incoherence: *This will is made out on this day Feb. 18 1995 unless superseded by a future will*. The ambiguous cases include three occurrences of lower case 'i' which might, or might not, be sentence-initial, and one occurrence of apparent lower case 't' in possible sentence-initial position (at the beginning of the second line on side two).

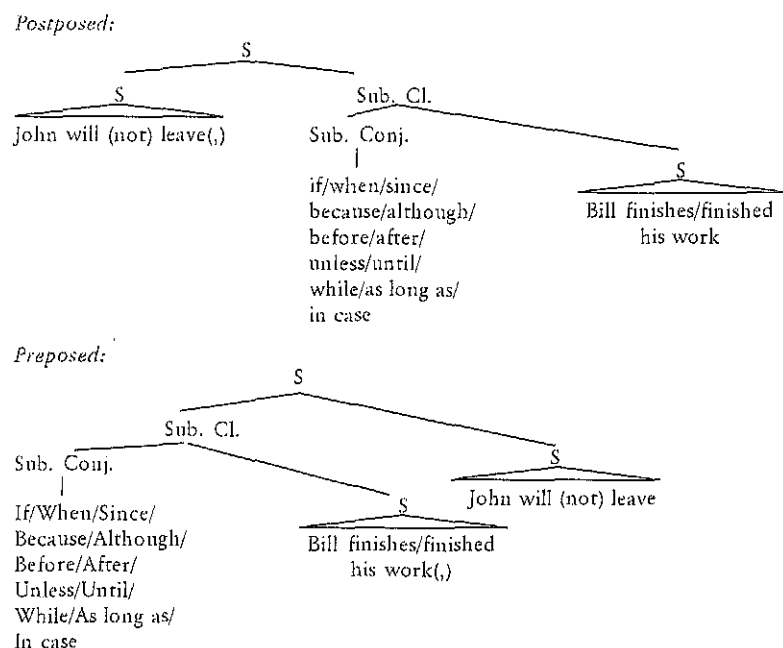
Syntax

With these preliminary efforts fruitless, I turned to syntax. To perform a syntactic analysis of such a deviant discourse, a linguist has to make the standard assumption of linguistic competence on the part of the writer. We assume that written deviations from standard grammar or from known

dialect variations, or from punctuation conventions, are a less than perfect manifestation of the writer's underlying linguistic competence. Such an assumption is not only reasonable, since it accounts for the writer's ability to speak and understand English, but also useful, since it lets us access the grammar of the language as a weapon in our interpretive arsenal.

Is the subordinate clause *in case I die* part of the preceding sentence or the following one? Subordinate clauses in English can occur postposed or preposed, as shown in Example 4.

Example 4 Postposed and preposed subordinate clauses in English



I am not aware of any statistical tendency for subordinate clauses in English generally to occur in one as opposed to the other position. (Even if there were such a tendency, this would carry very little probative value concerning what syntax Sam intended in his will.)

However, Sam, in his own language use, might exhibit an idiosyncratic preference for one position or the other. I had access to a set of Sam's personal notes from recent years, and in them I looked at all the subordinate clauses. Of course, these notes represented a different discourse type from the will, but they and the will were written by the same person in the same general time period, so if Sam did have a strong predisposition for preposed or postposed subordinate clauses, conceivably this might

be reflected in the notes. If the notes showed a strong predominance for preposed or postposed subordinate clauses, this would favour, though only weakly, a preposed or postposed positioning of the *in case I die* clause in the will. Example 5 is a summary of subordinate clauses found in these writings that begin with five different conjunctions:

Example 5 Number of preposed and postposed subordinate clauses beginning with different subordinate conjunctions from a set of Sam's writings

after:	preposed:	1
as:	preposed:	3
	postposed:	1
	ambiguous:	1
as long as:	preposed:	1
when:	preposed:	2
	postposed:	3
if:	preposed:	4
	postposed:	2

In the will, the subordinate conjunction at issue is *in case*. There were no examples in Sam's writings of subordinate clauses headed by *in case*. But the conjunction *if* semantically resembles *in case*. So the *if* subordinate clauses in Sam's writings are of particular interest. There were four preposed *if* clauses and two postposed ones in the set of writings. Example 6 illustrates this.

Example 6 Preposed and postposed subordinate clauses headed by *if* in Sam's writings

- (a) preposed: IF THE PERSON NAMED BY ME AND NO CONTACT I MUST READ THE INTERVIEW PROPER TO PREPAIR FOR DEPOSITION
- (b) postposed: OTHERS – WILL NAME IF NEED A DESING TEAM + OFFICS LOCATED IN MY BUILDING

I concluded that it was impossible to determine from Sam's use of subordinate clauses in his writings whether the *in case I die* subordinate clause was likely to be pre- or postposed in the will.

Next I considered discourse function. Suppose there were strong evidence that in English generally one discourse function was associated with preposed position of a subordinate clause and another discourse function associated with postposed position, and suppose the 'in case I die' clause in question in the will seems to bear one or the other of these functions. This would favour a preposed or postposed status, though, again, only weakly.

Just such a theory of the discourse functions of preposed vs. postposed subordinate clauses is put forward by Chafe (1984). According to Chafe, when subordinate clauses function as what he calls 'guideposts', they tend to occur in preposed position; but when they, instead, 'add' to an assertion, they tend to occur in postposed position. The 'guidepost' function is to guide information flow, 'signaling a path or orientation in terms of which the following information is to be understood ... providing a temporal, conditional, causal, or other such orientation for the information in the upcoming main clause'. In contrast, 'additive' subordinate clauses, which tend to follow their main clauses, add something to the assertion expressed by the main clause and are semantically less subordinate to it. Chafe points out that the correlation between guidepost function and preposed position, and additive function and postposed position, is related to the general discourse tendency to place old information first, new information second (see Example 7).

Example 7 Examples from Chafe (1984) of preposed, 'guidepost', subordinate clauses, and postposed, 'additive' subordinate clauses

- (a) Preposed, with 'guidepost' function:
- (i) uh *because I'm an adviser*, I have to be on campus in the afternoons too.
 - (ii) ... and *when we got there*, there weren't any mosquitoes.
- (b) Postposed, with 'additive' function:
- (i) That in itself was scary, *'cause I never fainted before*.
 - (ii) So the purpose of the course is to - ... create something like that ... *If that's possible*.

Chafe points out that sometimes these postposed clauses have separate intonation contours, and represent 'afterthoughts', as in Example 7 (b)(ii). Chafe does not point out, but it can be noted, that such an afterthought can represent a speech act separate from the one embodied in the main clause.

In the will, there are four subordinate clauses, shown in Example 8.

Example 8

This is my will [i] *incase something Happens* [ii] *if I am disabled that I can not speake or am unable to do my ability to speke or Parilized Carolyn Davis shall Have the full wrights as my wife* [iii] *in case I die this is my will + I leave her \$2,000,00 2 million dollars AND my Home at 51 Monte MAR Dr SAUALito CALIF THis will is made out on THis DAY FEB 18 1995* [iv] *unless superseded By a future will AFRE THIS DAY IT STANDS AS A LEGAL will*

(Subordinate clause (i) and subordinate clause (ii) can also be regarded as a single subordinate clause. Under that analysis, what holds for the extended subordinate clause (i + ii) is the same as what holds for the shorter subordinate clause (i) indicated in Example 8.) Without taking into account Chafe's analysis, subordinate clauses (i)-(iii) are ambiguous between preposed and postposed status, while subordinate clause (iv) is unambiguously preposed. (The prepositional phrase *AFRE THIS DAY* is ambiguously between being part of the *unless* subordinate clause and being part of the following main clause.) With three clauses two ways ambiguous as to placement, there are, mathematically, eight possible parsings:

Table 1

	(i)	(ii)	(iii)
(a)	Preposed	Preposed	Preposed
(b)	Preposed	Preposed	Postposed
(c)	Preposed	Postposed	Preposed
(d)	Preposed	Postposed	Postposed
(e)	Postposed	Preposed	Preposed
(f)	Postposed	Preposed	Postposed
(g)	Postposed	Postposed	Preposed
(h)	Postposed	Postposed	Postposed

However, not all of these are plausible, because taking one clause as preposed or postposed can affect whether another clause has one or the other status. For instance, arrangement (b), in which clauses (i) and (ii) are preposed and clause (iii) is postposed, is semantically implausible, as the paraphrase in Example 9 indicates.

Example 9

This is my will. [i] *Incase something Happens*, [ii] *if I am disabeled that I can not speake or am unable to do my ability to speke or Parilized* Carolyn Davis shall Have the full wrights as my wife [iii] *in case I die*.

The implausibility derives from the clash between the preposed and the postposed conditions. Also implausible are arrangements (c), (d), and (f). The implausibility of these arrangements is shown in Example 10.

Example 10

(c) This is my will. [i] *Incase something happens* [ii] *if I am disabled that I can not speake or am unable to do my ability to speke or Parilized*. Carolyn Davis shall have the full wrights as my wife. [iii] *In case I die* this is my will...

[This is implausible because the second sentence is incomplete, being composed of two subordinate clauses without a main clause.]

(d) This is my will. [i] *Incase something happens* [ii] *if I am disabled that I can not speake or am unable to do my ability to speke or Parilized* Carolyn Davis shall have the full wrights as my wife [iii] *in case I die*.

[This is implausible because of the clash between the preposed and postposed conditions, just as in arrangement (b), given in Example 9; the difference is only that in (b) the second subordinate clause is taken as preposed while in (d) it is taken as postposed.]

(f) This is my will [i] *incase something Happens*. [ii] *If I am disabeled that I can not speake or am unable to do my ability to speke or Parilized*, Carolyn Davis shall have the full wrights as my wife [iii] *in case I die*.

[This is implausible for the same reason as (b) and (d); the preposed and the postposed conditions clash.]

The plausible arrangements are given in Example 11.

Example 11

(a) This is my will. [i] *Incase something Happens*, [ii] *if I am disabeled that I can not speake or am unable to do my ability to speke or*

Parilized, Carolyn Davis shall have the full wrights as my wife. [iii] *In case I die* this is my will ...

(e) This is my will [i] *incase something Happens*. [ii] *If I am disabeled that I can not speake or am unable to do my ability to speke or Parilized*, Carolyn Davis shall have the full wrights as my wife. [iii] *In case I die* this is my will ...

(g) This is my will [I] *incase something Happens*, [ii] *if I am disabeled that I can not speake or am unable to do my ability to speke or Parilized*. Carolyn Davis shall have the full wrights as my wife. [iii] *In case I die* this is my will ...

(h) This is my will [i] *incase something Happens*, [ii] *if I am disabeled that I can not speake or am unable to do my ability to speke or Parilized*. Carolyn Davis shall have the full wrights as my wife [iii] *in case I die*. This is my will ...

As mentioned above, taking subordinate clause (iv) as postposed results in incoherence as shown in Example 12.

Example 12

This will is made out on this day, Feb. 18, 1995, unless superseded by a future will ...

All four subordinate clauses state conditions. According to Chafe, conditions are a type of 'guidepost'. Therefore, Chafe's findings predict that all four are probably preposed. Consequently, clause (iii) is probably preposed.

However, this evidence is weak. It is certainly possible for a speaker of English to use a postposed subordinate clause as a Chafean 'guidepost'. In fact, Example 6 (b) contains one from Sam's own writings (*OTHERS - WILL NAME IF NEED A DESING TEAM*), so clearly Sam not only could, but did.

With the results of the syntactic investigation inconclusive, I moved on to the pragmatic analysis.

Pragmatic analysis

Interpreting a will requires presuming the testator intended to be communicatively cooperative. We assume Gricean cooperativeness in interpreting any discourse, but we may be entitled to extra confidence in this assumption in the case of legally operative texts, because writers of such texts must be assumed to have made every effort to make their intended

meanings clear, because of the intent for the texts to have world-changing (in Searle's [1976] term, 'fitting the world to the words'), operative, binding effect.¹⁵ Writers of wills might possibly be ascribed an even greater degree of care than authors of other legal illocutionary texts, such as statutes and contracts, since testators, unlike legislators or contractors, must know that when a will becomes operative its writer will not be available to clarify or disambiguate it.

There are three independent pragmatic analyses. First, if Sam had intended for Carolyn to take his entire estate, he could have said so, instead of writing *Carolyn Davis shall have the full wrights as my wife*, which is a somewhat obscure way to accomplish that testamentary act. However, if by those words Sam intended that Carolyn should have a range of decision-making powers to act in his stead if he became disabled, including acting in diverse business, medical, and household matters, the apparent vagueness of the words makes more sense, since a wide variety of responsibilities could have been contemplated.

This observation reflects the operation of the Gricean sub-maxim of Manner: Avoid obscurity of expression. Under this maxim, a clear interpretation of a discourse is favoured over a vague one, because speakers and writers know that addressees expect utterances to comport with the expectations embodied in the Gricean maxims, including the maxim of Manner. So, third-party interpreters, such as a court, can assume that a speaker or writer acted in accord with that expectation.

However, the Gricean maxims differ in the strength of the implicata they generate. Grice (1989) himself points out that 'the maxims do not seem to be coordinate' (going on to affirm the essentialness to communication of the Quality maxim); Horn (1984) points out that while intentional violations of Quality constitute lies, and intentional violations of the first maxim of Quantity (Horn's 'Q' principle) are misleading, violations of his 'R' principle, roughly equivalent to the Gricean maxims of Relation and Manner and the second maxim of Quantity, 'are often simply unhelpful or perverse'; and Horn (1993) comments that 'the maxims do not appear to be created equal'. While the Manner maxims may be important in conversation¹⁶ they may be less so in formal written discourse. So the inference from the Manner maxim that Sam meant something different from a testamentary act by the words *Carolyn Davis shall have the full wrights as my wife* is relatively weak.

Second, the specificity of the bequest of the \$2 million and the house implicates, under the maxim of Quantity, that Carolyn is to receive only the \$2 million and the house. Under the Gricean maxim of Quantity, the amount of information in an utterance is implicated by the speaker or writer, and inferred by the addressee, to be sufficient for current communicative purposes. This maxim, in contrast

to the maxim cited in the above two paragraphs (Manner), is extremely powerful, at least as applied to Sam's will.¹⁷ In testimony, I gave evidence of the power of the maxim of Quantity to generate such an implicature in a demonstration to the judge, by telling him that I was about to give him two pens. I then handed him three. The judge responded with clear surprise, as if he expected me to give him *only* two. Because the language in the will, containing the quantifier *\$2 million*, is scalar, it is a textbook case of language used to implicate 'this and no more', exactly as *Max has two children* implicates that he has only two and *I ate some of that cake* implicates that I did not eat all of it.¹⁸

What is more, the implicatum of the specific grant of the \$2 million and the house – that Carolyn is to receive *ONLY* that – contradicts the *full wrights* language on side one, *if* that *full wrights* language grants Carolyn the right to take, as wife, the entire estate. However, the relatives' interpretation is not internally contradictory. Example 13 provides a paraphrase of the will under the relatives' interpretation.

Example 13 Paraphrase of the will under relatives' interpretation

This is my will.

In case something happens – if I am disabled [so] that I can not speak or [am] unable to do my ability to speak or paralyzed – Carolyn Davis shall have the full rights as my wife.

In case I die, this is my will + I leave her \$2,000,000 and my home at 51 Monte Mar Dr., Sausalito Calif. This will is made out on this day, Feb 18 1995. Unless superseded by a future will after this day it stands as a legal will.

Under this interpretation there is no contradiction between *Carolyn Davis shall have the full wrights as my wife* on side one and *I leave her \$2 million and my home* on side two. Moreover, there are no other contradictions. All else being equal, an interpretation without internal contradiction is preferred over one with internal contradiction – again, a Gricean conclusion (from the Manner maxims). This particular piece of Gricean analysis is echoed by a provision in California probate law:

All the parts of an instrument are to be construed in relation to each other and so as, if possible, to form a consistent whole. If the meaning of any part of an instrument is ambiguous or doubtful, it may be explained by any reference to or recital of that part in another part of the instrument (CA Probate C. § 21121).

Third, the same specific grant of \$2 million and the house is subject to a Gricean analysis under the maxim of Relevance: Be relevant. Under Carolyn's interpretation, the specific grant lacks relevance, since it is contained within the claimed greater grant made in the words *Carolyn Davis shall Have the full wrights as my wife* on side one. But under the relatives' interpretation, the specific grant is relevant, since it embodies the testamentary act of devising just the \$2 million and the house to Carolyn. Gricean Relevance is also an implicit part of the California probate code:

The words of an instrument are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative (CA Probate C. § 21120).¹⁹

I was able to conclude from the pragmatic analysis, most powerfully from the application of the maxim of Quantity, along with lesser support from the other maxims, and with some, slight, support from functional syntax, that the relatives' interpretation was supported but Carolyn's was not.

CONCLUSION

Carolyn Davis could be considered the sympathetic figure in the case. She lived with Sam and was much closer to him in later years than his relatives. So the court might have wanted to be 'fair' to Carolyn in construing the will, if the will text were ambiguous, as it would appear to be if merely sentence-level grammar were considered. But the pragmatic analysis led to the conclusion that the will was not ambiguous, when considered as a whole discourse. Based on pragmatic analysis, the will unambiguously expresses an intent by the testator to devise specific money and property, only a part of his estate, to Carolyn Davis, leaving the balance of the estate to be distributed under the laws of intestacy. Under California probate law, the language of a will is controlling:

The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument (CA Prob. C. § 21102(a))

In April 1997 the trial court filed its decision. The court interpreted the will 'as being intended by Sam to cover two eventualities: the first, if he was disabled; the second, if he was to die'.²⁰ The court rejected Carolyn Davis's interpretation on grounds of the meaning of the text: 'Petitioner's interpretation of the will is rejected by the Court even though it avoids intestacy because the interpretation is unreasonable and does not accomplish the intent of the testator.'²¹

A year later the appellate court filed its decision, affirming the lower court's decision.²² The appellate court cited the lower court's approval of the pragmatic analysis. Since the lower court had (naturally) treated the expert testimony as pertaining to a question of fact, the appellate court would not revisit that court's response to the expert testimony.²³ However, the appellate court did draw conclusions about the meaning of the will in terms that, in non-technical language, manifest a common-sense understanding that is equivalent to that derived from pragmatic analysis:

The bequest to Davis is not vague or ill-defined. The will does not say that Davis should have Zakessian's estate, *including* \$2 million and the Monte Mar Drive house. It does not say that Davis should have *at least* \$2 million and the house. Instead, the bequest is precisely described.... The specificity of the language implies that Davis is to receive that much and no more.... [H]ad [Zakessian] intended Davis to receive his entire estate, there would have been no reason to include the specific bequest. Instead, its inclusion is compelling evidence that he did not intend her to receive everything.²⁴

Trying to assess the weight in the court's deliberations of the linguistic evidence can be no more than speculative, but I am willing to offer such speculation. Whether or not the court had its own intuitions about the meaning of the will, the linguistic evidence may have provided a basis for the court to understand the structure of the text and how that structure gives rise to its meaning. And perhaps, on its own, the court, lacking training in linguistics, could not have appreciated this structure. Thus the contribution of linguistics may have been to play the role of a 'tour guide', in Solan's (1998) felicitous phrase.

ACKNOWLEDGEMENTS

I am very grateful for comments and suggestions received from Georgia M. Green, Muffy E. A. Siegel, Lawrence M. Solan, Peter M. Tiersma, and Charles P. Wolff. Naturally any remaining errors are my responsibility.

NOTES

- 1 Estate of Sam Zakessian, Deceased. Carolyn J. Davis vs. George Gagos et. al, A078666 (Marin County Super. Ct. No. 39269; 'The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument,' CA Probate Code § 21102(a)); unpublished decision, First Appellate District, Division One, at 7).

The words 'as expressed in that will' and 'as expressed in the instrument' support an 'objective' test for what might be thought subjective, namely, the testator's intention:

The basic rule in the interpretation and construction of any will is that the intention of the testator must be carried out as nearly as possible...In ascertaining the testator's intent, courts employ an objective test: the intention to be determined is that which is actually expressed in the language of the will..., not some undeclared intention which may have been in his [or her] mind. *Estate of Simoncini* (1991) 229 Cal. App.3d 881, 888-9.

- 2 'Linguistic Experts as Semantic Tour Guides' (see pp. 000-000 in this volume).
- 3 A California appellate decision, at the court's discretion, can be published in the California Reporter, in which case it carries precedential value, or left 'unpublished', in which case it has no precedential value.
- 4 CA Probate Code § 6402, §§(d), (f).
- 5 *Estate of Sam Zakessian*, A073786, aff'd by Court of Appeal of the State of California, First Appellate District, unpublished.
- 6 The fact that the overwriting was largely these initials, those of the testator, contributed to the court's decision that the overwriting did not revoke the will.
- 7 The grammar, capitalization, and lack of punctuation of the text might lead one to suspect that the writer was not a native speaker of English, but reportedly he was.
- 8 'The intestate share of the surviving spouse is as follows: ... The entire intestate estate if the decedent did not leave any surviving issue, parent, brother or sister, or issue of a deceased brother or sister.' CA Probate Code § 6401(c).
- 9 Though not so damagingly, since the relatives never argued that Sam intended them to receive assets (their claim was based rather on recognition of intestacy as a statutory default under which the law prescribes how property is to be distributed if a testator does not set forth intent in a will). Moreover, under the relatives' interpretation the will does make one clear testamentary disposition, namely \$2 million and the home to Carolyn, whereas under Carolyn's interpretation that devise is irrelevant because it is contained within the asserted greater claim of the devise of the entire estate to her. The relevance analysis is taken up below.
- 10 In Re ESTATE OF SAM ZAKESSIAN, Statement of Decision on Petition for Determination of Entitlement to Estate Distribution [Prob.C. §11700], No. 39269, Marin County, CA, Superior Court (April 22, 1997).
- 11 *Estate of SAM ZAKESSIAN*, Deceased; Carolyn J. Davis v. George Gagos et al, A078555, Court of Appeal of the State of California, First Appellate District, Division One (unpublished) (1998).
- 12 *Id.*, at 8.
- 13 *Id.*, at 9-10.

- 14 *Estate of SAM ZAKESSIAN*, Deceased, Carolyn J. Davis v. George Gagos et. al., Supreme Court of California, S070154 (June 1988).
- 15 Many cites are possible. In the materials I turned over before my deposition, I included a copy of Grice (1975 [1968]) and the chapter on implicature from Levinson (1983).
- 16 Georgia Green reminds me (p.c.) that in social relations, the way you say something says a lot about what you feel.
- 17 Lawrence Solan reminds me (p.c.) that the Quantity maxim has been adjudged powerful in another legal context. The US Supreme Court held in *Bronston v. United States* (409 U.S. 352 (1973)) that it was not perjury to give literally true testimony that was misleading because not relevant to the question, but in discussion of what constitutes perjury the Court cited an example which the trial court below gave to the jury: if a person were asked how many times he or she had gone to the store, it would be perjurious for the person to answer 5 when he or she had been there 50 times. Thus, a covert violation of the maxim of Quantity has a place in US law as a possible basis for perjury. See Tiersma (1990) for extended discussion.
- 18 See Horn (1984), where numerous examples are cited (along with comments such as 'The primary examples of generalized Q-based implicata arise from scalar predications' and 'Examples of Q-based scalar implicature are legion.')
- 19 This section goes on to state the preference against intestacy: 'Preference is to be given to an interpretation of an instrument that will prevent intestacy, rather than one that will result in an intestacy'.
- 20 Statement of Decision on Petition for Determination of Entitlement to Estate Distribution [Prob.C. §11700], Superior Court of the State of California In and For the County of Marin, No. 39269, April 22, 1997, at 4.
- 21 *Id.*, at 7. The court also made a finding about the linguistic evidence presented: 'The balance of expert testimony supports the Court's conclusion that the language in the will is not reasonably susceptible to the interpretation put forward by the petitioner. In particular, the Court finds the linguistic analysis presented by respondents' expert more complete and comprehensive than that of petitioner's expert, whose analysis rested primarily on Sam's failure to capitalize a single letter in the will.' *Id.*, at 6. In this case report I have discussed only my own analysis, rather than addressing that put forward by Carolyn's expert.
- 22 *Estate of ZAM ZAKESSIAN*, Deceased. Carolyn J. Davis v. George Gagos, et. al., In the Court of Appeal of the State of California, First Appellate District, Division One, A078666 (Marin County Super. Ct. No. 39269). Unpublished opinion.
- 23 *Id.*, at 9.
- 24 *Id.* at 8.

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Linguistic ambiguity in non-statutory language: problems in 'The search warrant in the matter of 7505 Derris Drive'

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ABSTRACT When a motion to suppress was filed in a federal prosecution, this question arose: Did the search warrant authorize the FBI to seize the evidence sought to be suppressed? The warrant described certain items that could be seized, including both accounting documents and items such as notes and memoranda. A linguist testified about the current meanings of the non-accounting terms and the scope of the modifying clauses, 'which will disclose the sale and receipt of automobiles, both rebuilt and salvage' and 'which will reveal the identities and location of co-conspirators'. This article summarizes the implications and context of those questions, presents the linguist's answers, and reports the judicial response.

KEYWORDS lexical ambiguity, scope, syntactic ambiguity, expert testimony, search warrant, suppression hearing

INTRODUCTION

In late August of 1994, defence attorneys in Knoxville, Tennessee, asked Bethany K. Dumas to review the 'Search Warrant in the Matter of 7505 Derris Drive', of 31 March 1990, and the 'Report and Recommendation' of Magistrate Judge Robert P. Murrian in *U.S. v. Westwood Enterprises, Inc., et al.*, with particular attention to the categories listed in the search warrant that referenced specific types of written documents that were authorized to be seized.¹ Later, Dumas was also asked to study the seventy-nine-page 'Affidavit supporting the Search Warrant' and additional documents. According to the warrant, the following types of documents could be seized:

... bills of sale for automotive parts and rebuilt automobiles sold to businesses and to private individuals; automobile titles, including completed titles, blank titles, and open titles; payroll records, accounts receivable and accounts payable documents, which will disclose the sale and receipt of automobiles, both rebuilt and salvage; receipts from salvage yards and auction companies; daily receipts and Federal Express mailing receipts; telephone logs, address books, diaries, hand-