

Baseando-se estritamente nas informações constantes do texto abaixo, responda em português às questões de número 1 a 10 e escolha apenas uma dentre as opções apresentadas nas questões de número 11 a 14.

LEGAL WRITING: SPECIFICITY

Adapted from The Routledge Handbook of Forensic Linguistics, Chapter 3: **Legal writing: specificity**. Specification in legislative writing: accessibility, transparency, power and control. By Vijay K. Bhatia [1.Forensic linguistics. I. Coulthard, Malcolm. II. Johnson, Alison, 1959–HV8073.5.R68 2010 363.25 – dc22].

1. Legal discourse is different from most other professional discourses, in that the nature of its interpretation process, whether spoken or written, is very much dependent on the context in which it is likely to be applicable. It is particularly so in the case of legislative writing, which is drafted to correct a specific social ‘mischief’ and hence invariably interpreted in the context of relevant descriptions of such instances of ‘mischief’, often treated as the material facts of the case to which a specific legislative statement is applied. In a court of law, particularly in an adversarial system of justice, maximum effort is made to establish the material facts of the case, and this is invariably done in the light of the applicable law, including the precedents established through relevant earlier judgements. It is therefore crucial for the negotiation of justice that precedents as well as legislative statements are clearly, precisely, unambiguously and adequately specified.

2. Legislative expressions are required not only to be clear, precise and unambiguous, but all-inclusive too. Although it appears to be a contradiction in terms, a close analysis will reveal that a clever balance between the two is the essence of the craftsmanship of legislative intent. In parliamentary democracies, legislative authority is invested in the legislature as it represents the people who elect them, and they zealously guard this right and would not like to hand over this role either to the judiciary or the executive. This creates the possibility of a three-way institutional conflict.

3. The first dimension of this potential conflict is between the legislature (the parliamentary institution responsible for making socio-political and economic policies) and the executive (the government bureaucratic institution responsible for executing policies discussed and framed

in the legislature) especially in parliamentary democracies. The essence of this conflict is the tension between political power that is invested in the legislature by virtue of the fact that they are elected by the people, and the bureaucratic privilege that is often available to the members of the government, who have a duty to implement the socio-political and economic policies of the government and who often believe that they have the privilege to interpret legislative intent in the context of the implementation of policies. Since members of the executive are not present in the legislature when government policies are discussed and formed, there is always a danger of conflict between the interpretations viewed as authoritative by the two institutional players.

4. The second dimension of this potential conflict is between the legislature and the judiciary. The basis for such a conflict stems from the question, 'Who has the ultimate power to give the most authoritative interpretation of legislative intent?' In parliamentary democracies, the courts at various levels seem to have wide-ranging freedom to authorise final interpretations of the legislative intent, but on the part of the legislature, one often finds maximum control over the way legislative intentions are expressed. A senior parliamentary counsel frames it nicely when he points out that no effort is spared 'to box the judge firmly into a corner' from which he cannot escape.

5. There's always the problem that at the end of the day there's a system of courts and judges who interpret what the draftsman has done. It is very difficult to box the draftsman has done. It is very difficult to box the judge firmly into a corner from which he cannot escape ... given enough time and given enough length and complexity you can end up with precision but in practice there comes a point when you can't go on cramming detail after detail into a bin.

6. The third dimension of this potential conflict, therefore, is often between the judiciary and the executive, which allows absolute freedom to interpret legislative intentions to the system of courts, and at the same time gives unlimited power to the legislature to give voice to peoples' socio-political rights and privileges, on the one hand, and obligations on the other.

7. Within and across these institutional conflicts, it is the job of the legal draftsman to guard against any possible misinterpretation or misapplication of legislative provisions not only by any of the institutional players, but also by other citizens in conflict who often are prone to extend their rights and privileges and shrink their obligations to unexpected limits. It is almost an impossible task to find an appropriate degree of balance by giving expression to legislative intentions in a way to minimise any chance of such misadventures.

8. To make matters more complex, these draftsmen are almost universally criticised for making their provisions inaccessible to ordinary citizens, often questioning their loyalty to their so-called 'real readers'. In fact, one may, with some justification perhaps, claim that legal

discourse, especially in common law jurisdictions, is an instance of conspiracy theory, according to which legislative provisions are purposely written in a complex and convoluted manner, so as to keep ordinary readers out of accessible range and to perpetuate dependence on the specialist legal community.

QUESTÃO 1

De acordo com o parágrafo 1, de que forma o discurso jurídico é diferente da maioria dos outros discursos profissionais? (6 pontos)

De que maneira essa peculiaridade se aplica, particularmente, à redação legislativa? (6 pontos)

QUESTÃO 2

Para que servem os precedentes estabelecidos no âmbito de julgamentos anteriores relevantes, consoante o parágrafo 1? (7 pontos)

QUESTÃO 3

No contexto do parágrafo 1, que características fundamentais devem estar presentes tanto nas declarações legislativas quanto nos precedentes judiciais? (7 pontos)

QUESTÃO 4

A qual direito se refere o parágrafo 2 no seguinte trecho: “In parliamentary democracies, legislative authority is invested in the legislature as it represents the people who elect them, and they zealously guard this right and would not like to hand over this role either to the judiciary or the executive”? (7 pontos)

QUESTÃO 5

De acordo com o parágrafo 2, qual é a essência da qualidade do produto (ou do resultado) do intento legislativo? (7 pontos)

QUESTÃO 6

De acordo com o parágrafo 3, quais são os atores institucionais envolvidos na primeira dimensão do conflito potencial a que se refere? (7 pontos)

QUESTÃO 7

Qual a origem do poder político do legislativo, segundo o parágrafo 3? (7 pontos)

QUESTÃO 8

De acordo com o parágrafo 4, em que consiste o potencial conflito entre o legislativo e o judiciário? (7 pontos)

QUESTÃO 9

De acordo com o parágrafo 7, por que razão cidadãos comuns poderiam dar possíveis interpretações equivocadas a provisões legislativas? (7 pontos)

QUESTÃO 10

De acordo com o parágrafo 8, de que maneira os legisladores frequentemente tornam a produção legislativa inacessível ao cidadão comum? (6 pontos).

Segundo especulação levantada pelo autor no mesmo parágrafo, por que motivo(s) os legisladores tornariam os textos legais intencionalmente inacessíveis a esse cidadão? (6 pontos)

QUESTÃO 11

Qual a tradução de “authoritative”, utilizado no parágrafo 3, que é menos adequada no contexto em que se insere o termo? (5 pontos)

Escolha uma opção:

- a. Justificadas
- b. Válidas
- c. Oficiais
- d. Autoritárias

QUESTÃO 12

No contexto do parágrafo 5, qual é a tradução que melhor transmite o sentido do trecho “you can end up with precision but in practice there comes a point when you can’t go on cramming detail after detail into a bin”? (5 pontos)

Escolha uma opção:

- a. Você pode até acabar em precisão, mas na prática lá vem um ponto quando você não pode ir enchendo detalhe depois de detalhe dentro de uma lixeira.
- b. Você pode terminar com precisão, mas na prática chega um ponto em um contêiner que você não pode ir lotando de detalhes e mais detalhes.
- c. você pode até terminar com precisão, mas na prática chega um ponto em que você não pode seguir abarrotando um contêiner com detalhes e mais detalhes.
- d. você pode acabar com precisão, mas na prática chega um ponto em que você não pode mais estudar detalhes depois de detalhe em uma lixeira.

QUESTÃO 13

De acordo com o sentido do primeiro período do parágrafo 7, qual o melhor significado da expressão “to guard against”? (5 pontos)

Escolha uma opção:

- a. opor-se a
- b. proteger-se de
- c. guardar
- d. agir para evitar

QUESTÃO 14

No contexto do parágrafo 8, a que se refere o termo “provisions”? (5 pontos)

Escolha uma opção:

- a. discursos político-legais
- b. textos legais
- c. informações providas pelos legisladores
- d. provisões orçamentárias