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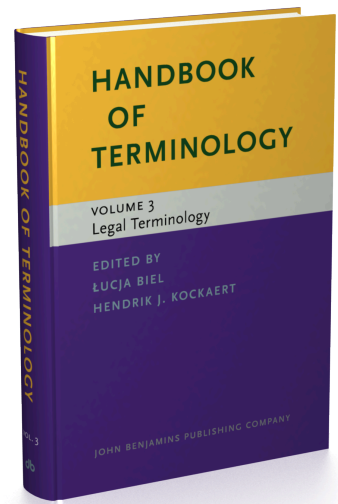

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Definitions in law across legal cultures and jurisdictions

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Legal definitions organize legal texts; they create new legal concepts and clarify general language words for maximum precision. As such, they are subject to rigid drafting constraints. A comparative analysis of definitions (in common law, continental law, and that of the European Union) reveals various semantic, stylistic, text, or discursive conventions which mirror the differences between legal systems and legal cultures. The analysis integrates tools and selected methodologies from linguistics, legal theory, legal logic, logical semiotics, and comparative law. The point of reference will be the Anglo-Saxon, EU, and Polish legislative drafting guidelines. Model definitions are presented. A focus on the formulation of definitions across legal systems and cultures can contribute to the systematization of knowledge on definitions in law.

Keywords: legal definition, legislative drafting guidelines, legal terminology, normative text

Laws operate as definitions L. M. Solan (2010)

It is apparently easier to use words properly than to define them accurately
F. Reed Dickerson (1966)

1. Introduction

There are numerous approaches to defining terms and formulating terminological definitions. In law, a prescriptive approach predominates – legal definitions are the basic interpretative directives, as opposed to the discipline of terminology, where a descriptive approach applies.

The domain of law adopts an onomasiological perspective, from the concept to the term, as opposed to a linguistic semasiological approach, from the term to the concept (for a comparison of these two approaches, see Santos and Costa 2015). The domain

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specificity plays an important role in the construction of the representation of terminological knowledge.

Hence, definition typologies also differ between domains. The ISO 704 standard enumerates several types of definitions (2009, 22), of which widely applicable intensional definitions state the generic concept and its delimiting characteristics, such as the definition of a *convention* which is a "treaty, usually between more than two States, concerning matters of mutual interest" (Löckinger, Kockaert, and Budin 2015, 62–65). This definition is too broad, however, to be employed by international law, which recognizes the term *convention* both as a generic term embracing all international agreements and synonymous with the generic term *treaty*, and as a specific term used for formal multilateral treaties with a broad number of parties[1] (Elias 1974, 13–15; Wyrozumska 2006, 28–43). Legal definition can be defined, *inter alia*, as stipulative definition (ISO 704), i.e., a definition which results from adapting a lexical definition to a unique situation for a given purpose and which is not standard usage. The specific for law classifications of definitions will be dealt with in Section 3.

In law, definitions are the basic interpretation directives of a legal text; the definitions of law terms are therefore subject to rigid constraints. Legal definitions organize the world of legal texts: they create new legal concepts, clarify the meaning of already-existing concepts in general language words, and strive to bring maximum clarity and precision to legal texts.

Legal terminology has some unique features (e.g., indeterminacy, explicitness, formality, precision, hierarchicality), which directly bind the terms to a specific legal system (Jopek-Bosiacka 2019, 59–74). Legal definitions, in their construction, style, and positioning in legal texts, are subject to strict legislative drafting directives – national and institutional – which in turn stem from the legal doctrine particular to the given legal system and legal culture.

The comparative analysis of legal definitions from various legal systems demonstrates that they mirror the differences between the legal systems and legal cultures; they display a great variety of semantic, stylistic, textual, or discursive conventions, especially when one juxtaposes the systems of common law and continental law (including that of the European Union).

The analysis of legal terminology in definitions will be syncretically integrated with analytical tools and selected methodologies in legal theory, legal logic, logical semiotics, and linguistics. The starting point for the analysis of definitions in law will be the Anglo-Saxon, EU institutional, and Polish legislative drafting guidelines, constituting the canon of rules for the accurate formulation of definitions in law, as well as doctrine and jurisprudence. Models for constructing definitions of legal terms in various legal systems

1. Definitions of key terms used in the UN Treaty Collection: Conventions – https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml#conventions (DOA 25.04.2022).

and cultures, including branches of law (especially in the United Kingdom, the United States, Canada and Australia, the European Union, and Poland) will be presented.

A comparative and interdisciplinary approach and a focus on the construction and formulation of definitions dependent on the presented parameters across legal systems and cultures can contribute to the systematization of knowledge on definitions in law.

2. Law terms in definitions

The specific properties of legal texts reflect the principles of legislative drafting, which in turn constitute a unique canon of good legislation rules (Dickerson 1977; Kindermann 1979; Thornton 1996; Šarčević 1997; Wronkowska and Zieliński 1993, 157–161; Xanthaki 2013, 2014, 2016). These principles have universal relevance and are applicable in every legal system, although they are not always formalized in a separate legal act, as in the United Kingdom (Michalak 2015; Xanthaki 2016, 15). The formulation of a legal text is carried out in accordance with directives addressed to legislators concerning legislative technique, which indicate how substantive decisions on legal provisions may be expressed adequately by a legislator, in a concise, coherent, and communicative manner (Redelbach, Wronkowska, and Ziembiński 1994, 174–175). Legal text properties serve as an ultimate imperative to maximize the degree of communicativeness of a legal text (Wronkowska and Zieliński 1993, 10). Specific textual, linguistic, and stylistic solutions may change over time, as the legislative technique is subject to constant evolution (Wronkowska and Zieliński 1993, 26). This is also associated with an increasing level of detail in drafting guidelines (Koźmiński 2016 diachronically on the continuous elaboration of *Polish Legislative Drafting Guidelines* 1929–2002). The language of law itself is also changing, as the expressions in legal language are in constant use (Matczak 2019, 391). Among the most meaningful are those features which shape legal discourse as normative discourse, and which influence the achievement of the intended legal effects.

2.1 Normativity of law terms

The basis for the meanings reconstructed in legal texts is, in principle, the national general language; above all, this applies to lexis and syntax (Zieliński 2017, 132–134). The determination, and therefore the reconstruction of the meaning of legal texts, claims Zieliński, takes place on the basis of detailed directives of interpretation procedures (2017, 277–302). However, it should be borne in mind that each legal culture and each legal system has developed its own interpretation directives, based on its own doctrine and case law, which are related to the features of a given language and its legal texts (MacCormick and Summers 1991). The culture of continental law is indeed the construction of an abstract and general legal text (Zirk-Sadowski 2016, 163). The contents

of the normativity in legal culture are given and fixed (Morawski 2006; Zirk-Sadowski 2016, 168).

The normativity of legal texts and the legal terms they contain is a basic assumption to be made following Zieliński (2017, 98). This means that one must read legal texts at the descriptive (surface, literal) level, though above all at the directive level (one consisting of norms of conduct which are deduced or reconstructed in the process of the interpretation of a legal text) (Sarkowicz 1995). The question posed by Zieliński as to what is normative in a legal text seems fundamental (2017, 98–99). In continental legal culture, apart from titles and headings or preambles, the provisions that convey legal norms (including legal definitions) are the most important in the reconstruction of a norm, and thus the interpretation of the text.

Normativity in the language of law shapes the terminology of law, as well as the way it is formed and introduced into a legal text to form a coherent network of concepts; this occurs both within a given text and in the entire system of concepts functioning in law, with its individual branches and domains.

For the purposes of this discussion, we may adopt a definition of a law term used in legal information systems, where legal terms are treated as linguistic realizations of legal concepts (Biasiotti and Tiscornia 2011, 157). Concepts are creations of legal dogmatics, built upon legal norms through a process of generalization and abstraction (Biasiotti and Tiscornia 2011, 147). Within the process of creating concepts, normative contexts are the descriptions that (1) limit the common meanings of terms, (2) indicate the conditions of use for terms like state, action, occurrence, the legal actor, circumstances, etc., (3) define an extension of status or consequences, or legal effects, by means of a right, obligation, or sanction, (4) contain assertions concerning the application of the law, in the light of case-law (Biasiotti and Tiscornia 2011, 147–148).

2.2 Precision vs. indeterminacy

Precision, or the accuracy and correctness of a legal text, is a prerequisite for clarity and comprehensibility (communicativeness). The communicativeness of legal texts is a "socially significant" feature (Wronkowska and Zieliński 2012, 39; Wronkowska 1976). Clarity and precision seem to be universally relevant properties of legal texts, regardless of the language and legal system. The principle of unambiguous attribution as a directive for formulating legal texts is usually expressed as "one term, one meaning" (Finucane 2017, 16–17) (see the guidelines for the drafting of US federal legislation in Filson and Strokoff 2008, 554 and Chapter 19.5: "Use the same words to describe the same concept throughout the bill").

"Concern" for clarity and precision in EU legal texts appears in many EU guidelines for legislators and translators (e.g., Guidelines 6 and 14 of the *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the draft-*

ing of European Union legislation of 2015, both relating to terminology). Guideline 6.2 of the *Joint Practical Guide*, under which "Consistency of terminology means that the same terms are to be used to express the same concepts and that identical terms must not be used to express different concepts", refers to *formal consistency*. Guideline 6.2. further reads that "Any given term is therefore to be used in a uniform manner to refer to the same thing, and another term must be chosen to express a different concept" (see ISO 704 terminological principles 2009; Löckinger, Kockaert, and Budin 2015). This principle for the drafting of multilingual EU legislation "applies not only to the provisions of a single act, including the annexes, but also to the provisions of related acts, in particular to implementing acts and to all other acts in the same field" (Guideline 6.2.1). The terminology of a given legal act "must be consistent with the legislation in force" (Guideline 6.2.1). Among other things, the precision of legal texts is enhanced by legal definitions, as well as the grammatical and logical relationships between their elements.

The assumed (axiological) rationality of a legal system enforces the unambiguity of a legal text. Ideally, "the words of the laws should excite in everybody the same ideas" (Montesquieu 1748/1752, 614). In modern times, the principle of unambiguity of a legal text is expressed in the following way: "Equal terms shall be used to designate equal concepts, and different concepts shall not be designated with equal terms" (§ 10 of the *Polish Legislative Drafting Guidelines* of 2002 [uniform text 2016], see also sec. VII.2 of the *Polish Legislative Drafting Guidelines* of 1929). An interrelated principle, set out in § 8 of the *Polish Legislative Drafting Guidelines* of 2002, is that legal acts should use terms in their basic, commonly accepted meanings. Legal texts should therefore be drafted by applying terms that are typically used for the description of situations occurring in the domain regulated by a given branch of law, provided that these terms meet the requirement of unambiguity. As an example of a violation of this principle, Wierczyński (2016, 80) points to the use of the terms *duty/obligation to refrain* [*obowiązek powstrzymania się*] instead of *prohibition* [*zakaz*] in the *Polish Criminal Code* in Article 72 § 1(5), in which the court may, when suspending the enforcement of a sentence, oblige the convicted person to refrain from abusing alcohol or other intoxicating substances.

The precision of legal texts is often contrasted with the **vagueness** and **indeterminacy** of legal texts. Vagueness in law is manifested in particular ways. Marmor 2014 (85–105) distinguishes four types of vagueness in Anglo-Saxon normative discourse; however, in continental systems, consistency in law is emphasized more than the legislator's intentions, for example. Conceptual vagueness refers to the meaning of expressions with indefinite and unclear dictionary word content; this is associated with having an incomplete set of constitutive features for determining the meaning of a given phrase, or the impossibility of ascertaining whether the feature can be ascribed to a given subject/entity (Zieliński 2017, 155–162; Ziembiński 1995, 29–30 on constitutive features). Indefiniteness (vagueness) in legal texts is mostly related to abstract names, and concerns different parts of speech: nouns, verbs, adjectives, and adverbs. Examples are numerous:

"reasonable attorney's fees" (*Maine Legislative Drafting Manual* 2016, 75); "sufficient cause", "duly", "properly" (*Montana Bill Drafting Manual* 2018, 22); another group may include modifiers such as "fair/just/equitable, fit/suitable, fraudulent, reckless, satisfied, as soon as possible, (un)necessary, (un)reasonable" (Rose 2017, 65). It is vital that the meanings of undefined terms and phrases are documented by legislation and case-law. The phenomenon of construing and interpreting words according to the contexts in which they are written is referred to as the *noscitur a sociis* rule (Rose 2017, 66).

Conceptual vagueness entails "scope vagueness" (Radwański and Zieliński 2001, 11 et seq.), so called because it concerns the scope of names, in the logical sense. As a logical category, vagueness consists in the impossibility of determining whether there is the designator of a given name, i.e., whether or not it falls within the scope of a given name, despite having knowledge about the features of the given object (see in more detail Zieliński 2017, 155–162). For example, at what point does a *short description* cease to be short? Vagueness in scope serves to make a legal text more flexible (Wronkowska and Zieliński 2012, 296–298; Zieliński 2017, 160–161).

The intentional use of indeterminate terms and expressions is of central importance in legal texts (Zieliński 2017, 161), and this seems to comprise the basic directive concerning their interpretation. It should also be noted, following Zieliński (2017, 161), that the interpretation of indeterminate expressions belongs to authorized bodies and institutions applying the law, such as the courts. Thus, indeterminacy is given priority over the precision of the text (Zieliński 2017, 161). One of the reasons for doing so is that indeterminacy is linked to general clauses (Zieliński 2017, 164–165), i.e., legal provisions which deliberately include vague/indeterminate expressions.

Undesirable vagueness, on the other hand, is mentioned by the common law legislative drafters in the context of insufficient precision and bad legal style (Bhatia et al. 2005; *OPC Drafting Guidance* 2020, 6, 1.3.11–1.3.14). It contradicts the principle by Gowers: "[U]se precise and concrete words rather than vague and abstract words" (1987, 48). A potentially vague expression in English-language legal texts, which in most cases will require concretization, includes:

> [*P*]*rescribe* in definitions, to mean *prescribe in regulations* (specify, set out). For example, section 24 of the British Welfare Reform Act 2007 defines *prescribed* as *specified in, or determined in accordance with, regulations*. For legislative drafters, this phrase used in definitions sounds artificial, and the addressees of legislation may find expressions like *person of a prescribed description* bewildering, for example:
> *In this section,* **qualifying young person** *means a person of a prescribed description.*
> could be replaced with
> *In this section* **qualifying young person** *means a person of a description specified in regulations made by the Secretary of State.* (*OPC Drafting Guidance* 2020, 84)

Other useful examples of inadequate precision may be found in Asprey (2010: Chapter 13).

2.3 Explicitness

An important feature of law texts in the domain of legal communication is the principle of the *explicitness* of a legal text, namely that the meaning does not result from the communicative situation, but directly from the linguistic means used (Jopek 2001, 86). There is no room in this case for any additional semantic implications which differ from those allowed by the interpretation of the law. The meaning of a particular legal provision is assigned and fixed until it is altered by another provision.

The utterance (expression) *X is Y* can determine a new term through legal definitions, where *X is Y in the context of C* (see Section 3 below) or establish its legal status in a legally binding way, through other linguistic means or deontic modalities, e.g., "*X must be Y*" (Biasiotti and Tiscornia 2011, 148).

The explicitness of a text may be related to the specific linguistic means used in formulating the provisions. It may be in the use of a correct grammatical number for the terms, allowing an unambiguous interpretation of the text. In the Canadian *Guide to Making Federal Acts and Regulations* 2001, for example, the preferred form is a singular number (2001, 116). The convention in legislative drafting is to draft in the singular rather than in the plural, as multiple modifiers often result in ambiguity when the modified noun is plural (and the conjunction *and* does not resolve the ambiguity in the plural):

(1) *charitable and educational institutions* may mean:
   a. *a charitable and educational institution*, or
   b. *a charitable or educational institution*

(2) *persons who have attained the age of 65 years and are disabled* may mean:
   a. *a person who has attained the age of 65 years and is disabled*, or
   b. *a person who has attained the age of 65 years or is disabled.*

Indirectly, the explicitness of the text derives from a universal legislative directive to use linguistic expressions in their basic and commonly accepted meanings. Most common law drafting guides cite and follow Sir Ernest Gowers' principle: "use the most familiar words" (Gowers, Greenbaum, and Whitcut 1987, 48; *OPC Drafting Guidance* 2020, 5). Similarly, EU law follows the cited principle: "Words must be used in their ordinary sense" (Guideline 6.2.2. of the *Joint Practical Guide…* 2015, 20) (see also § 8 of the *Polish Legislative Drafting Guidelines*). This means avoiding archaisms (for example, *here-* and *there-* words such as like *herewith* or *thereby*), sophisticated words like *far-fetched*, or jargon expressions. It is not always necessary to use terms such as *particulars* or *convey*; it is often enough to use *information* or *give*, respectively (*OPC Drafting Guidance* 2020, 5–6); Wronkowska and Zieliński 2012, 43–48). Fowler (1968) proposes five principles for English, which are applied in most common law legislative drafting and include the following: prefer the familiar word to the far-fetched, the concrete word to the abstract, the

single word to the circumlocution, the short word to the long, and the Saxon word to the Romance word.

2.4 System-bound terms

Law and legal language are system-bound; they reflect the history, evolution, and culture of a specific legal system (Cao 2007, 23). The national character of internal law presupposes the need to express in the language of law those legal concepts which are specific to the legal system. The more distant the legal systems and cultures, the more system-bound terms are used. When juxtaposing the two most important world legal systems – that is, the common law system and the continental law system, many such terms can be identified (especially in the field of civil law), such as *trust*, *equity*, *tort*, *consideration*, *misrepresentation*, etc., not to mention the term *common law* itself, or the names of legal professions. Mattila notes that in continental systems in legal contexts, "system-neutral senses" prevail in relation to common law (2013, 348–349).

Thus, the avoidance of system-bound terms in multilingual, multi-system, or international legislation is particularly important. The use of expressions and phrases in particular legal terms that are too specific to a certain language or national legal system should therefore be avoided in the EU legislation under Guideline 5 of the *Joint Practical Guide* (2015). A similar principle is applied to international law (Šarčević 1997).

2.5 Hierarchy of terms

The legal terminology hierarchy principle is not directly emphasized in most legislative drafting guidelines currently in force. However, the *Polish Principles of Legislative Drafting* of 1939 explicitly indicated the hierarchical nature of the expressions adopted in basic acts: "§ 9 (2). If it is necessary to choose between different expressions, existing in legal texts to designate the same concept, preference shall be given to expressions used in basic instruments such as codes".

Similarly, in the institutional guidelines of the European Union, the rank of the legal act in which the term is placed is not without significance (Biel 2017, 34–35). For example, the terminology in amending, implementing, and delegated Union acts must be consistent with the terminology of the basic acts (Polish in-house style guide *Vademecum Tłumacza* 2021, 86). The hierarchy of terminology is therefore linked to formal consistency as distinguished in the *Joint Practical Guide* (2015), such that a uniformly consistent terminology should be used in the provisions of related acts, in particular to implementing provisions and in all other acts in the same field (Guideline 6.2.1). Terms contained in primary legal acts, such as the EU Treaties, are binding on acts of secondary legislation, in particular regulations, directives, and decisions.

2.6 Formality vs. plain language

The language of law is, as Mattila points out, one of the oldest specialized languages (2013, 129). This fact also has certain consequences with regard to the nature of its terminology. Despite the current trends toward simplification in the English language of law, legal language is still characterized by a high degree of formalism, e.g., we are more likely to be confronted with the expression *confer powers* than *give powers*.

The formal character of English-language terminology also depends, as Krzeszowski (2012, 103) rightly notes, on etymology. Whether entering English by way of Latin or French, words of Romance origin are more formal than their synonyms of Germanic origin. For example, words of Romance origin like *people*, *liberty*, *purchase*, or *infant* are more formal than those of Germanic origin, such as *folk*, *freedom*, *buy*, or *child*, respectively. Some of these words further differentiate their meanings in specialized communication in the language of law, e.g., *buy* vs. *purchase* or *freedom* vs. *liberty*.

The simplification of the language of law in the English-speaking world (and the lowered register of legal texts in line with the reforms of plain English in various Anglo-Saxon countries) often concerns the erasure of Latin terms (Williams 2015). This process is mostly institutional in nature. In England and Wales, for instance, the 1998 Lord Woolf reform of civil procedure introduced native (non-loan) expressions, often technical and less official, in place of Latin terms or their Latinized equivalents (*The Civil Procedure Rules 1998* ; Grainger and Fealy 2010, 177–178). This also involved specialized terms and expressions (Gadbin-George 2010), e.g., *in camera* has been replaced with *in private*, *subpoena* is now *witness summons*, and *writ* has become *claim form*. Similar changes are currently being made, for example, in Scotland (*The Simple Procedure Rules 2016*).

Unlike the English plain language movements, the terminology of Polish legal texts remains markedly formal, according to the findings of Choduń (2007, 124–134), when considered amid other lexical varieties of Polish. The choice of lexis for legal texts is conditioned by three factors, claims Choduń (2007, 152–153): (1) legal culture, understood as the legal tradition in which legal texts are formulated, (2) directives for the drafting of legal texts (such as principles of legislative techniques), and (3) the communicative situation (Gizbert-Studnicki 2004).

Simple style and plain language seem to support the rationality and coherence of the system. Anglo-Saxon principles of good legislation place the simplicity of language at the very centre of their focus (see Xanthaki's pyramid of legislative virtues, 2016, 21). The process of simplifying the language of law has strong traditions in Anglo-Saxon countries, firstly in the USA (since Richard Nixon's decree of 1972), then in the UK – the White Paper of 1982 (see Zych 2016 on this topic). Plain language revolutionized Anglo-Saxon legislative technique (see Xanthaki 2014, Chapter 6). Plain language, notes Xanthaki (2016, 22), is not limited to lexis, syntactic structures, or punctuation, but concerns the structure of the whole text and its appearance, both on paper and screen.

3. Definitions in a normative text

The way of defining reflects to some extent the way of conceptualising and categorising things (Solan 2010, 64). By means of legal definitions, the legislator organizes the world of legal texts by creating new legal categories and clarifying the meanings of already-existing words (in general language), thereby striving to achieve maximum unambiguity and precision (Ajdukiewicz 1985a, 46–51; Wronkowska and Zieliński 1993, 115–118; Zieliński 2017, 176–178, on defining directives). In the legal sense, legal definitions have a normative character, i.e., they constitute norms for prescribing appropriate meanings to occurring words/expressions when interpreting legal texts (Redelbach, Wronkowska, and Ziembiński 1994, 192–193; Wronkowska and Zieliński 1993, 118–119; Zieliński 2017, 189–190). More precisely, legal definitions are legal provisions from which norms (interpretative directives) are reconstructed, which prescribe how certain meanings are to be taken into account (Zieliński 2017, 189).

Owing to their function, provisions containing definitions are considered the most difficult to formulate (Rylance 1994, 137). Legal definitions are used to clarify the crucial concepts in a legal text (Zieliński 2017, 177). The application of legal definitions in legal texts, as well as their construction, stylization, and positioning are subject to strict national and institutional legislative directives; these, in turn, result from the legal theory (and doctrine) specific to a given legal system and culture.

3.1 Types of definitions

The basic external scope of a legal definition is the Act and its implementation regulations (Zieliński 2017, 188). Legal definitions are "chronologically the first linguistic directives of interpretation" (Choduń 2018, 195). They have the status of binding interpretative directives encoded in legal provisions (ibid.). Definitions can be divided in different ways, depending on the adopted criteria (see Figure 1).

Aristotle's division into real and nominal definitions indicates the distinct points of reference (Ajdukiewicz 1985d, 296–300). Real definitions, which are in fact intensional definitions (ISO 704, 2009), most succinctly characterize a given object or objects of a particular kind, by distinguishing their common features (Ajdukiewicz 1985c, 226–235; Ziembiński 1995, 44). Nominal definitions, on the other hand, focus on expressions that provide information about the meaning of a defined word or words. Thus, they are second-level statements, in contrast to real definitions (Ziembiński 1995, 5). In legal texts, nominal definitions are vital, as they refer to the meanings of the words or expressions being defined.

Based on the purpose, we may distinguish between descriptive and prescriptive definitions. Descriptive definitions indicate the meaning of a given word (in a particular language) at present or in the past (Ziembiński 1995, 45–46). Prescriptive definitions,

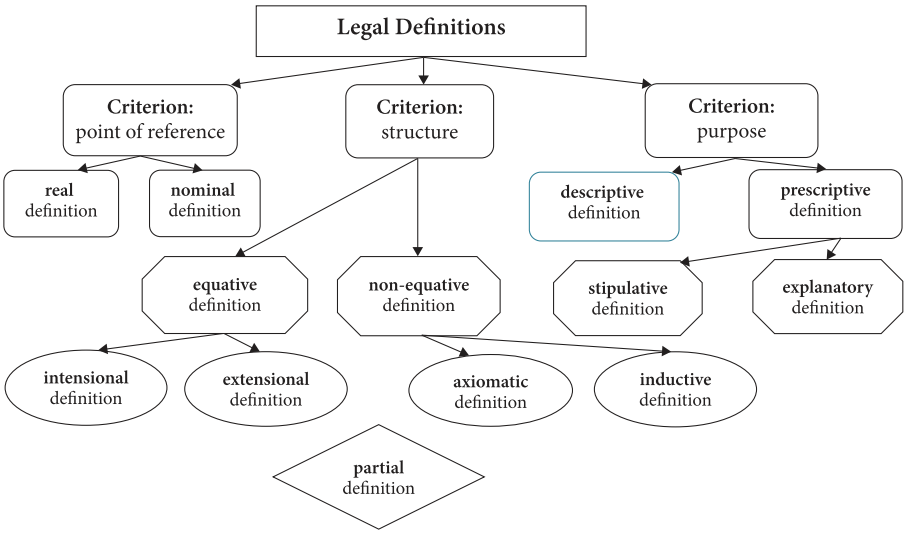
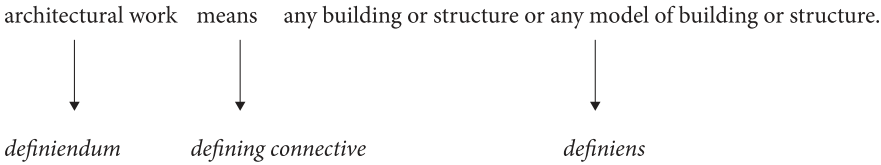


Figure 1. Types of legal definitions (based on Lewandowski et al. 2020, 59–65)

as the name suggests, establish (prescribe) the meaning of a given word for the future (Ziembiński 1995, 46–48). Among the prescriptive definitions, one can further distinguish between explanatory definitions, which specify the future meaning of the defined word, and stipulative definitions, which define a new future meaning for a given word, e.g., one which was previously completely different, or absent due to the lack of objects to be named (such as new technologies). Most frequently, laws contain explanatory definitions (Ziembiński 1995, 47). A similar approach is adopted by Wank (1985, 65), who points to the predominance of prescriptive definitions, with no indication of subcategories. A comparable division is postulated by Anglo-Saxon researchers (e.g., Bowers 1989; Thornton 1996).

3.2 Construction vs. type of a legal text

The most important aspect in legal language and discourse is the logical division of definitions based on their structure; this directly influences the linguistic form of the legal definition, which depends on the rules for constructing expressions and the rules of inference in a given language, as Ajdukiewicz (1985b, 244) rightly notes. Regarding structure, the basic division entails equative and non-equative definitions (see Figure 1). An equative definition consists of three parts: the concept being defined (the *definiendum*), the expressions or concepts by means of which the term or concept is being defined (the *definiens*), and the defining connective (linking) phrase, which highlights the equivalence in meaning and scope of both the *definiendum* and the *definiens* (Stone 1964, 171; Ziembiński 1995, 48; Zieliński 2017, 182). For example:



[the Canadian *Copyright Act* R.S.C., 1985, c. C-42, R.S., c. C-30, s. 2, last amended on July 1, 2020]

Thus, the word *definition* in law means the whole *definition formulation*, not the *definiens* alone, following legal theoreticians such as Stone (1964, 171) or Ziembiński (1995) and Malinowski (2006a).

Outside law, intensional definitions do not need such a connective: they start with the generic concept and add the distinguishing characteristics. Thus, under ISO 704, architectural work would be defined as follows:

> **architectural work**
> any building or structure or any model of a building or structure

In logic, it is preferable to define a concept (*definiendum*) by comparing its scope with that of a more general name (*genus* – species) limited by the distinguishing features (*differentia specifica* – species difference) of the referent of the given name as a species among the indicated genus. It is preferable to keep to the following sequence of phrases: *definiendum* – defining connective – *definiens* (Malinowski 2006b, 167), though the reverse order also occurs (Wronkowska and Zieliński 1993, 124). The classical equative definition consists in indicating genus and species difference, according to the Latin principle *definitio fit per genus (proximum) et differentiam specificam* (definition proceeds from the closest genus and the specific difference). For example,

> (1) Article 153 Full age or the age of majority is 18 years.
> (*Civil Code of Québec* CCQ-1991 – c. 64, a. 153)

> (2) Article 38. Domicile
> The domicile of a natural person is the place of his habitual residence.
> (*Louisiana Civil Code,* Acts 2008, No. 801, § 1, eff. Jan. 1, 2009; Acts 2012, No. 713, § 2);

> (3) Article 872. Meaning of estate
> The estate of a deceased means the property, rights, and obligations that a person leaves after his death, whether the property exceeds the charges or the charges exceed the property, or whether he has only left charges without any property.
> (*Louisiana Civil Code,* Acts 1981, No. 919, § 1, eff. Jan. 1, 1982)

Among equative definitions, in addition to the classical (intensional) definitions described above, we distinguish non-classical (extensional) definitions, indicating in

the *definiens* the ranges of names, giving the total scope of the name being defined (Zieliński 2017, 184; Ziembiński 1995, 49; this type is labelled as a denotative definition by Dickerson 1966, 47).

Extensional definitions may be exhaustive – listing all elements of the scope – or non-exhaustive – singling out exemplary elements of the scope, often using the expression "in particular" ("including but not limited to") (Zieliński 2017, 185). Enumerations in definitions may also be subject to expansion into their various subtypes, dependent on many factors (Nilsson 2015, 83ff). In law, extensional definitions may be formulated by means of various listing techniques: (1) column enumerations, (2) row enumerations, or (3) column and row enumerations (mixed technique) (Zieliński 2017, 184–185). Some typical examples of the use of the above techniques in legal definitions include the following:

(1) Article 2814. The following documents in particular are authentic if they conform to the requirements of the law:
   a. official documents of the Parliament of Canada or the Parliament of Québec;
   b. official documents issued by the government of Canada or of Québec, such as letters patent, orders and proclamations;
   c. records of the courts of justice having jurisdiction in Québec;
   d. records of and official documents issued by municipalities and other legal persons established in the public interest by an Act of Québec;
   e. public records required by law to be kept by public officers;
   f. notarial acts;
   g. minutes of boundary-marking operations.

(*Civil Code of Québec* CCQ-1991 – 1991, c. 64, a. 2814; I.N. 2014-05-01; I.N. 2016-01-01 (NCCP))

(2) Article 24. Kinds of persons:
There are two kinds of persons: natural persons and juridical persons.

(*Louisiana Civil Code*, Acts 1987, No. 125, § 1, eff. Jan. 1, 1988)

(3) Section 20 *Tied pub*:
   (1) In this Act, "tied pub" means a pub which is being leased to a tenant who is subject to a contractual obligation which –
      (a) requires that some or all of the alcohol to be sold in the pub be supplied by –
         (i) the landlord of the pub, or
         (ii) a person nominated by the landlord, and
      (b) is not a stocking requirement.

(2) In subsection (1)(b), "stocking requirement" means a contractual obligation which –
  (a) requires that some of the beer or cider (or both) that is to be sold in the pub is produced by the landlord,
  (b) does not require the tenant to procure that beer or cider from a particular supplier, and
  (c) neither prevents the tenant from, nor penalises the tenant for, selling in the pub beer or cider that is produced by a person other than the landlord (although a contract term may impose restrictions on such sales).

(3) References in this section to the landlord of a pub includes any person who is a group undertaking in relation to the person who is actually the landlord.

(*Tied Pubs (Scotland) Act* 2021, asp. 17, Part 3, section 20)

The relations of the directives expressed in the subsequent elements of the enumeration should be unambiguously indicated (Malinowski 2007, 33). In many Anglo-Saxon rules of legislative technique, including the Australian Drafting Directions (*Drafting Direction No. 1.5. Definitions*, 2019, 13–14), equative non-classical extensional definitions consisting in a column enumeration are preferred. According to the common law Drafting Directions, the use of the defining conjunction *means* or *includes* suggests the full or incomplete nature of the definition. The use of a proper conjunction determines the use of the equivalent of a conjunction: in an exhaustive definition (means → or), and in non-exhaustive definition (includes → and). For example, following Australian Drafting Directions No. 1.5. Definitions (2019, 11):

1. "*domestic animal* means: (a) a cat, (b) a dog, *or* (c) an alpaca".
2. "*domestic animal* includes: (a) a cat, (b) a dog, *and* (c) an alpaca".

Alternatively, Australian Drafting Direction (2019, 13) recommends avoiding the use of conjunctions by using *any of the following* (for *means* definitions) or *the following* (for *includes* definitions) (see also Butt 2013, 169 on avoidance of conjunctions in extensional definitions). The rules for the use of conjunctions in common law definitions also encompass row enumeration (Rosenbaum 2007, 27):

(1) "*Grain* means wheat, barley, or rye" (equative extensional exhaustive definition).
(2) "*Grain* includes wheat, barley, and rye" (equative extensional non-exhaustive definition).

Extensional non-exhaustive definitions are used, according to Wronkowska and Zieliński (2012, 291–292) in four situations: (1) when the scope of a given expression at the moment of formulating an extensional definition is not intended by the legislator to be closed, (2) when other legal texts have already formulated partial definitions of terms included in the defined concept, (3) the scope of the defined expression includes too

many elements (e.g., the definition of *vegetables*), (4) at the moment of formulating the definition, it is difficult to indicate all elements of the scope, as in the case of new technologies.

A partial definition can be understood very broadly as any definition which is not a complete definition. Partial definitions do not give a complete description of a word (expression) being defined; they only partially explain its meaning. From this perspective, they remain beyond the distinction between equative and non-equative definitions, as they can take different forms, such as extensional definition or axiomatic definition (Lewandowski, Machińska, Malinowski, and Petzel 2020, 65).

In addition to the equative definitions: classical and non-classical, i.e., intensional and extensional, there are also non-equative definitions, in particular axiomatic and inductive definitions (but also others which are not mentioned here). However, they will not be discussed in detail, as there is no direct relation between their various structures and the way the definitions conceptualize the defined concepts. As far as the construction of non-equative definitions is concerned, it should be noted that they do not have a defining connective (linking phrase), nor do they indicate what expression can replace the defined word or expression. For clarification, the main differences between axiomatic and inductive definitions should be pointed out.

Axiomatic definitions place the defined word in a model sentence, such that the linguistic context and the context of other provisions allow one to understand the meaning attributed to a given word (Lewandowski, Malinowski, and Petzel 2004, 42), for instance:

> Article 1907. Unilateral contracts
> A contract is unilateral when the party who accepts the obligation of the other does not assume a reciprocal obligation.
> (*Louisiana Civil Code*, Acts 1984, No. 331, § 1, eff. Jan. 1, 1985)

Inductive definitions, in turn, distinguish between two separate parts: the initial condition and the inductive condition. The initial condition explicitly names some of the elements belonging to the set, while the inductive condition indirectly indicates the remaining elements of the set by adding the relation by which these elements exist relative to the elements from the initial condition (Lewandowski, Malinowski, and Petzel 2004, 38). In other words, it is a logical definition of a set, in which one can distinguish initial elements from elements obtained from the initial ones (PWN Encyclopedia online). An example of a legal inductive definition is Article 957 § 1 of the *Polish Civil Code*:

> An individual for whom any benefit is envisaged in the will cannot be a witness to the making of a will. Nor can the following individuals be witnesses: a spouse of that individual, his relatives by consanguinity or affinity to the first and second degree and individuals having an adoption relationship with him. (The *Polish Civil Code* 2011)

The first sentence of Article 957 § 1 of the *Polish Civil Code* sets out the initial condition that a person is unable to be a witness when drawing up a will. The second sentence is an inductive condition, which indicates the other persons covered by the scope of the defined name, related to the person from the initial condition (Nawrot 2012, 86).

3.3 Construction vs. location of a legal definition

The next important element is the way in which legal definitions are formulated, which is usually dictated by terminological conventions of a specific language and domain, or even a specific genre of text. In addition to definitions occurring individually, there are collective definitions (called aggregate definitions). An aggregate definition summarizes the defined concepts in a single sentence, with a part common to all of the terms being defined, as in the example below:

> 50. Unless the provision or context otherwise requires, the definitions and rules of construction in this part govern the construction of this code.
>
> (*California Family Code*, Part 2. Definitions [50–155] of Division 1 Preliminary provisions and definitions (Part 2 enacted by Stats. 1992, Ch. 162, Sec. 10.) [1.–185]

Following the rules of logic (Ziembiński 1995, 49–50), definitions can take three forms of stylization, i.e., ways of verbalising a nominal equative definition (Lewandowski, Malinowski, and Petzel 2004, 197):

1. **dictionary stylization**, in which a word/expression has the same meaning as the other indicated expression, e.g., the word *A* means the same as the expression *B*;
2. **semantic stylization**, where the word/expression denotes specific objects or refers to specific features or relations, e.g., the word *A* means *B*; this stylization is used in the aggregate (collective) definitions;
3. **object stylization**, which indicates the meaning of the word being defined by specifying the features or listing the species that comprise the genus, e.g., *A is B*. Object stylization is used in descriptive and explanatory prescriptive definitions (Wronkowska and Zieliński 2012, 289–290).

The *Polish Legislative Drafting Guidelines* prefer semantic and dictionary stylizations of legal definitions (§ 15(1): "The definition shall be formulated in such a way as to indicate beyond doubt that it refers to the meaning of terms, in particular it shall be given the form: "The term 'a' means b." or "The term 'a' means the same as the term 'b'". However, in practice, definitions in semantic or object stylizations prevail in Polish legislative acts (Ziembiński 1995, 50), a feature which is corroborated by empirical observations (Malinowski 2006b, 172–175). Definitions formulated in the object stylization (using the linking phrase *is*) sound more natural, although they differ in their formulation from other (general) sciences. This object-oriented style also leads to some issues concern-

ing interpretation. Firstly, this manner of formulating legal provisions does not give certainty as to whether we are dealing with a complete definition, which determines the full scope of the content of a given concept, or with a partial definition (Zieliński 2017, 187). Secondly, the word *is* may form part of other types of non-definitional provisions. In addition, the absence of quotation marks next to a defined term can sometimes create confusion as to what is a name and what is a defining element (*definiens*).

To conclude the discussion on the stylization of legal definitions in Polish legal texts, it is worth adding that from a legal point of view, the formulation of a legal definition (its stylization) does not determine the function of legal definitions in the text, as in each case, nominal definitions in law determine the meaning of concepts, and not the properties of objects (Malinowski 2006a, 49, Note 6).

Legal definitions may also be present in various forms and places in the structure of a legal text. Their location or place in a text has an impact on the way definitions are formulated (Jopek-Bosiacka 2011, 20–21; Šarčević 1997, 153–156). Maciej Zieliński, a Polish legal theorist, points to three modes of including definitions in texts of legal acts (2017, 178–182):

1. in a separate fragment of the text, the so-called glossary;
2. in the substantive text (in separate provisions);
3. in the form of the so-called parenthetical definitions (interjections) in substantive provisions.

In the common law drafting guidance, a dedicated glossary with definitions contains particularly complex terms or terms important to the interpretation of a legal text (Alexander 2014). In Polish laws, as in other continental jurisdictions, the glossary of law terms, as a separate part of the act, is located in the general provisions at the beginning of the act.

The second method is to include the definitions in the general provisions of the act, usually in the introductory part. This may apply to statutes, regulations, resolutions, and ordinances (executive orders), as well as acts of local law.

The third option – parenthetical definitions – are interjections into the substantive provisions. As Zieliński (2017, 180) notes, while undertaking certain meritorious solutions, the legislator also makes particular linguistic decisions, namely labelling the legal situations or events that s/he creates. Thus, the legislator adds names to the characteristics of these situations or events by putting them in brackets, which is more common to continental jurisdictions. Take for example this definition from the German Stock Corporation Act:[2]

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2. *German Stock Corporation Act* of 6 September 1965 (*Federal Law Gazette I*, p. 1089), as last amended by Article 9 of the Act of 17 July 2017 (*Federal Law Gazette I* p. 2446) http://www.gesetze-im-internet.de/englisch_aktg/englisch_aktg.pdf (DOA 19.08.2021).

> Section 9 Issue price of the shares of stock
> Shares of stock may not be issued at a price lower than their nominal amount or lower than the stake in the share capital allocated to the no-par-value share (minimum issue price).

In parenthetical definitions, the *definiendum* (the name being defined) is placed in parentheses and is a shortened name of the fact situation described in the provision or its preceding part (Zieliński 2017, 181). Typically, the name defined, which is natural in view of its function, is found in the second, rhematic part of a legal provision/sentence. Sometimes, there is an equivalent (synonym) in brackets, instead of an abbreviation of the phrase used (Zieliński 2017, 181).

The internal scope of legal definitions, namely placing definitions in the general provisions of the Act, indicates that they apply to the entire Act, whereas transferring it to a systematic unit/measure (the general provisions of that systematic unit) narrows the scope of the definition only to that unit, such as a section, title, or book of the Code (Zieliński 2017, 189). The narrowing of the scope of the definition is indicated in the legal text itself, e.g., "in this part of this Act", the term […] means […]", or a form of parenthetical definition (Wronkowska and Zieliński 2012, 287–288; Zieliński 2017, 189; webinar *New Drafter Training. What Does that Mean? Crafting and Using Definitions in Statutes* of 25.09.2014 (A. Alexander, a Senior Legislative Counsel with the Texas Legislative Counsel) (3:28; accessed: 10.08.2016; further cited as Alexander 2014.).

The correct location of legal definitions in a legislative act is important to the narrative of the legal text and is referred to in common law legislative technique as the storytelling approach. This drafting approach, in the words of Finucane (2017, 18),

> tries to present legislative provisions to readers in a way that tells them a story. Just as a storyteller introduces characters in the story, describes their relationships with each other, the activities they engage in and the events that affect them in a progressive and unfolding way (rather than all at once), so too does the drafter when drafting legislation. The characters in the legislative story may be individuals or corporate bodies, statutory bodies or non-statutory bodies, governmental bodies, or private bodies, any of which may be playing the leading role or a minor role. The events that happen to the characters and the activities they engage in may be many and varied, from being paid money or being granted a licence to committing a criminal offence. And instead of our story starting with "once upon a time" we start with "the Parliament enacts". The storytelling approach involves a number of drafting techniques, but for me the significant ones are drafting in the narrative style and structuring provisions so that the legislative story unfolds progressively, leading readers downwards in the structure from the general operative provisions to the more detailed operative provisions. On this approach, as far as possible, definitions are integrated into the narrative of the legislative story and appear in the story just in time.

On the narrative nature of laws, see also Tyszka (2014).

The storytelling approach favours the inclusion of definitions in the text (either in general or specific substantive provisions) rather than the creation of a separate glossary (Finucane 2017, 17) or using column row enumerations and parenthetical definitions (Finucane 2017, 19). See more on common law definitions below, in Section 4.2.1.

4. Law definitions

The system of law has a superior function to language and text. The system organizes the structure of a text and imposes both specific textual solutions and interpretation of the normative text on the basis of its genre and systemic context (e.g., branch of law). The system of law, similarly to the system of sources of law, has a hierarchical structure (Płeszka 1988), which has some implications for the choice and use of law terms.

In law, contrary to the linguistic coherence, i.e., "continuity of senses" as understood by de Beaugrande and Dressler (1990, 119), the coherence, as an element of legal reasoning, "the property of a set of normative propositions" (MacCormick 2005, 190), should be treated in terms of the effectiveness of a legal system (Amaya 2015, 2018; Dickson 2016; Matczak 2019, 282–288; Zieliński 2017, 262–266; Ziembiński 1993, 7). The differentiation made by Zieliński between the "vertical coherence" (which takes into account the hierarchy of legal acts and assumes consistency of the content of the lower norms with the hierarchically higher norms) and the "horizontal coherence" (distinguishing within the norms of a given act of legal principles of particular significance for the interpretation of ambiguous expressions) is relevant to the present discussion. Both types of coherence may be called "internal coherence", as opposed to vertical "external" coherence, where ratified international agreements must be consistent with the national legal order (Zieliński 2002, 283, 284, footnotes 15, 16, 17).

What is a system of law? Among many theories of the legal system, the metaphor invoked by the famous Polish judge Ewa Łętowska (2017, 17) portrays the contemporary system of law as a mechanism resembling a large clock, made up of numerous components: cogwheels, gears, springs, and fittings, designed to allow the constant movement of the machinery. Thus, its building blocks are not only the texts of laws, but also court judgments, administrative decisions, model contracts, and the like. The system has many creators, and it is dynamic, meaning that it is constantly "becoming" (Łętowska 2017, 17). While not all legal theorists will agree on this perception of the system of law, the clock metaphor captures the complexity of the legal system as a fundamental concept in law.

Our aim is not to provide a detailed reference to the various theories of systems of law. It is perhaps only worth pointing out that European legal systems are dominated by doctrines relating to positivism in its moderate form, combining elements of normativism and realism, and considering references to the elements of the doctrine of the law of nature, for example by referring to various principles of law (Leszczyński 1986;

Wronkowska, Zieliński, and Ziembiński 1974; Zieliński 2017; Ziembiński 1993, 53). Some principles are exclusive to a particular legal culture; others are generally accepted as having been derived from Roman law, which is the common core of legal culture for a large part of Europe (Ziembiński 1993, 55–56). The positivist concept of law seems to be the most useful for the purposes of this study, as in both its Anglo-Saxon and continental versions, law is viewed as a system of norms (Redelbach, Wronkowska, and Ziembiński 1994, 96; See an overview of normative concepts of law emphasising language in Endicott 2021). The system of law is constituted by legal acts as sets of ordered and interrelated general and abstract norms. Thus, it may reasonably be said that the components of the legal system are normative acts (Malinowski 2007, 128).

4.1 Definitions in branches of law

The meaning of legal terms is context-dependent, and may thus depend on the branch of law. For example, in Polish law, the term *juvenile* (*młodociany*) acquires different age limits in different branches of law. In labour law, it is a person who is at least 15 years of age and not older than 18 years (Article 190 of the *Polish Labour Code*). In the criminal context, a *juvenile* is a person who was under 21 years of age at the time of committing a criminal act, and under 24 years of age at the time of sentencing in the first instance (Article 115 § 10 of the *Polish Criminal Code* and Article 53 § 19 of the *Fiscal Penal Code*).

Criminal law, due to the prominence of consequences (sanctions), is regulated in a strict manner. In the *Polish Legislative Drafting Guidelines*, a separate Chapter 9 is dedicated to "Criminal provisions and provisions on financial penalties" (§ 75–81a). This also concerns definitions (Jopek-Bosiacka 2011, 21–22; Šarčević 1997, 157). Definitions contained in criminal legislation (the *Criminal Code*, the *Misdemeanours Code*, and the *Fiscal Penal Code*) are aimed at specifying the attributes of a prohibited act and simplify legal acts (Ochman 2009, 20; Patryas 1997, 7). However, they often differ from definitions in other branches of law. In the *Polish Civil Code*, the definitions are scattered in various places in the text (see Article 10 – the definition of an adult, while in the *Polish Criminal Code* the definitions are contained in a separate glossary entitled "Explanation of Statutory Expressions", Chapter XIV). Chapter XIV of the *Polish Criminal Code* is open, in the sense that the majority of offences are outside its scope in the special part of the Criminal Code (Chapters XVI–XXXVII). Definitions in Polish criminal law generally follow the form provided for in the *Polish Legislative Drafting Guidelines* (scope alternation due to the use of a definition dash and the use of conjunctions). It is also worth pointing out that various forms of crime (their qualified forms) are not defined explicitly, but by indicating the elements of the offence in neighbouring provisions, often in a retrospective manner. Frequently, the titles of chapters are also the primary means of contextualization, e.g., the title of Chapter XXXV of the *Polish Criminal Code*: "Crimes against prop-

erty", which includes Article 278 § 1 on theft (see also Przetak 2015, 170 et seq.; 202 et seq. in terms of thematic coherence).

In common law, criminal law is also usually regulated separately, although not always in a codified form (Bellis 2008, 15). The formula for criminal provisions (including definitions of offences) is usually expressed as follows: "Whoever knowingly does X in circumstance Y with result Z shall be fined or imprisoned":

> § 1002. Possession of false papers to defraud United States
> Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined under this title or imprisoned not more than five years, or both.
> (18 USC Ch. 47: Fraud and false statements, From Title 18 – Crimes and criminal procedure part I – Crimes)[3]

The above formula resembles the structure of a Polish criminal provision defining the elements of a prohibited act (crime, offence), although in Polish criminal legislation, when describing the elements of a prohibited act, the terms *unlawfully*, *knowingly*, etc. are not used (§ 76 of the *Polish Legislative Drafting Guidelines*). In general, however, the structure of the common law criminal legal norm is shaped differently. While in Polish criminal law the elements of the prohibited act are set out in an exhaustive, comprehensive manner, without referring to other provisions regarding commands/obligations, prohibitions, or sanctions (§ 75 (1) and § 78 of the *Polish Legislative Drafting Guidelines*), in common law criminal laws, the sanctioned norm may be separated from the sanctioning norm and contained in another provision (see Šarčević 1997, 157 on the construction of the definition in the Canadian Criminal Code).

Analogically to criminal law, *tax law* is treated separately in common law legislative technique, which is not typical of the *Polish Legislative Drafting Guidance*. For example, Australian legislation addresses individual taxpayers per *you* (Mr, Mrs, Sir or Madam) (*Drafting Direction No. 1.8 Special rules for Tax Code drafting, Part 11*): "This Division sets out the rules for working out deductions for certain gifts or contributions that you make." (*Drafting Direction No. 1.8 Special rules for Tax Code drafting, Attachment A, Example C (2006)*.

Australian tax laws are formulated in the second person (singular or plural). Defined terms co-occurring with mathematical formulas are almost always marked with an asterisk (*), also in other parts of the act (see *Drafting Direction No. 1.8 Special rules for Tax Code drafting, Attachment B, TLIP Note 2 (2006)*; detailed rules under points 16 to 21):

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3. https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title18-chapter47&edition=prelim DOA: 15.04.2021).

If your *non-PP taxable income exceeds $5,000, work out your ***averaging adjustment*** using the formula:

$$\text{*Basic averaging adjustment} \times \frac{\left(\text{BTI} - \text{Discounted income}\right)}{\text{BTI}}$$

where:

BTI is your *basic taxable income.

Figure 2. Illustration of Australian rules for marking defined tax terms in formulas with asterisks (source: *Drafting Direction No. 1.8 Special rules for Tax Code drafting, Attachment B, TLIP Note 2* (2006, 22)

The exceptions are core concepts for tax law such as: *amount*, *taxable income*, *assessment*, *income tax*, and key participants in the income tax system, e.g., *company*, *entity*, *individual*, *foreign resident*, *partnership*, or *trustee*, which are not identified with an asterisk (Income Tax Assessment Act 1997, Subdivision 2-C, 2–15).[4]

Within a definition, the defined term (*definiendum*) is identified by bold italics (*Income Tax Assessment Act 1997, Subdivision 2-C, 2–20).* In *A Guide to this Act, Division 2 – How to use this Act [Income Tax Assessment Act 1997]*, forms of identifying defined terms and statutory definitions are indicated.

(1) Australian tax definitions are of two types, in terms of purpose:
   a. definitions that *clarify meaning* (explanatory definitions), e.g., "***motor vehicle*** means any motor-powered road vehicle (including a 4-wheel drive vehicle)";
   b. definitions that *bunch concepts* (similar to aggregate definitions), e.g., "***recognised tax adviser*** means:
      (a) a *registered tax agent; or
      (b) a *legal practitioner; or
      (c) an entity which is not a *registered tax agent but who is exempted under subsection 251L(2) of the Income Tax Assessment Act 1936 from the operation of section 251L (Unregistered tax agents not to charge fees) of that Act." (source: *Direction No. 1.8 Special rules for Tax Code drafting, Attachment B, TLIP Note 3, What counts as a definition* (2006: 27–28).

For the convenience of the addressee, the bunching definitions include all designations of a name with common features (as well as those included in other provisions/texts). It

4. https://www.legislation.gov.au/Details/C2013C00082, (DOA 2.05.2021).

is not about the scope of the definition, but about the function (purpose) of gathering designators in one place, in order to make it easier for the recipients of the text (addressees) who are not legal practitioners to properly interpret the norms contained in the text. While explanatory definitions are known to Polish legal theory, such collective definitions that "bunch" concepts are not. In the opinion of Golsby-Smith, the concept of a bunching definition (which is a set that goes beyond the elements of a given act) allows one to communicate with an addressee in a convenient and intuitive way about groups of things with common characteristics and which fit into the overall conceptual scheme of the legislation (*Direction No. 1.8 Special rules for Tax Code drafting, Attachment B, TLIP Note 3, What counts as a definition* (2006, 28; ibidem). Remarkable attention is drawn to the exceptional efforts of Australian legislators, in terms of the clarity of tax acts in the sphere of both a coherent grid of concepts, as well as formal identification of terms:

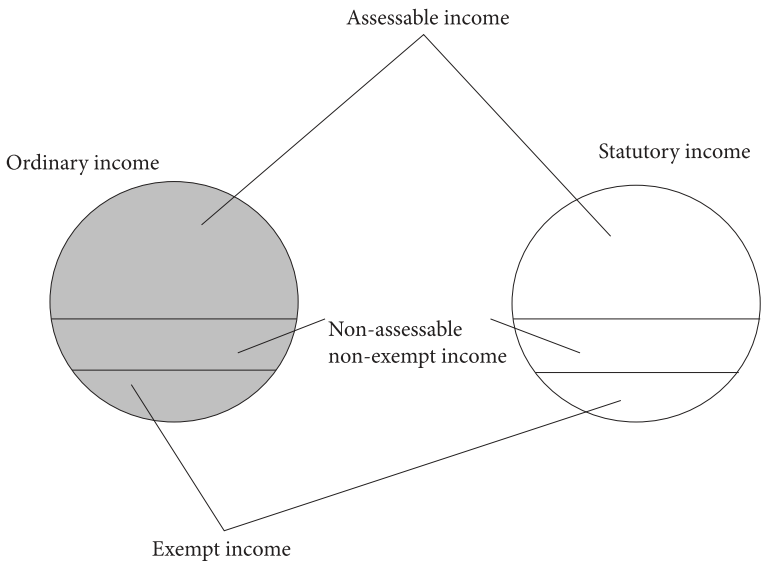

Figure 3. Diagram showing relationships among concepts in *Division 6 – Assessable income and exempt income* of the Income Tax Assessment Act 1997)[5]

Similar solutions, although not as far-reaching and progressive, at least in terms of visual presentations, are being introduced in the United Kingdom with the *Tax Law Rewrite Project.*[6]

5. https://www.legislation.gov.au/Details/C2013C00082 (DOA: 4.05.2021)

6. https://webarchive.nationalarchives.gov.uk/ukgwa/20140206160137/http://www.hmrc.gov.uk/rewrite/index.htm (DOA: 1.06.2021); compare also *Tax Law Rewrite: Main features of the Tax Law Rewrite Project* (2008), point 2.15 *Drafting style*. https://webarchive.nationalarchives.gov.uk/20080731

4.2 Definitions in systems of law

The choice of legal terms may also be conditioned by the system of law. In Canada, due to the duality of legal traditions, this issue is subject to statutory regulation: *The Interpretation Act* (2001, c. 4, s. 8.2) specifies that in the case of terminological discrepancies, the continental (civil law) terminology is to be used in the province of Quebec and interpreted in accordance with the system thereof, and the common law terminology in the other Canadian provinces:

> Rules of Construction. Terminology
> 8.2 Unless otherwise provided by law, when an enactment contains both civil law and common law terminology, or terminology that has a different meaning in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted in the other provinces.[7]

Definitions in various legal systems reflect differences between legal systems and legal cultures. When comparing the legal definitions in the two main legal systems, it should be emphasized that there are more definitions in the common law system (Wank 1985, 64) than in the civil law system. Definitions in common laws are also more elaborated (Cao 2007, 111–112; Mattila 2013, 90–91), which is due to the role of the definition and the distinctiveness of common law, a system which has been shaped differently from continental law in terms of its sources: judicial decisions, customary law, statutory law, and norms of equity (Tokarczyk 2008, 151–153). In my view, systemic differences particularly affect legal definitions, as well as their form and frequency, through the precedent, casuistic, and empirical nature of common law (see Roznai 2014 on the relationship between legal systems and definitions; Tokarczyk 2008, 152).

4.2.1 *Common law definitions vs. civil law definitions*

A wider range of definitions is used in common law countries than in countries with a continental system. This is partly due to its function of limiting the discretionary judicial power in the common law system (Wank 1985, 64). Definitions in common law systems are also longer, but given the tendency to simplify the language, this feature is also subject to change (see Mattila 2013, 90–95 for examples). Legal definitions in common law legislation show much greater frequency of use and typological diversity (Driedger 1976, 45–47; Šarčević 1997, 153–159; Thornton 1996, 144–154). Price (2012–2013, 1000),

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064245/ http://www.hmrc.gov.uk/rewrite/plans0001/0001_pt2.htm (DOA: 9.01.2019); see also Bertlin (2014).

7. *The Interpretation Act* (2001, c. 4, s. 8. https://laws-lois.justice.gc.ca/eng/acts/i-21/page-2.html#docCont DOA: 3.06.2021).

for example, reports that the *United States Code* contained over 25,000 definitions in the years 2011–2012. Some of the terms, like *child*, *commerce*, *employee*, *person*, *sale*, or *state*, were defined many times and in a variety of ways, so the actual number of terms was smaller, though the overall number of definitions is still impressive.

Common law legislators often use a classification of definitions according to purpose (e.g., the classification by Price 2012–2013, 1009–1013, into descriptive vs. prescriptive definitions), indicating that in legal texts there are mainly stipulative definitions (see *Legistics. Types of Definitions*)[8] which establish meanings for the future (Ziembiński 1995, 46). They enumerate various types of stipulative definitions to achieve the intended purpose, such as delimiting, extending, and narrowing (Driedger 1976, 45–47). This is not a logic-based classification, but a typology of definitions. Another concerns their scope; Sullivan (2002, 51) distinguishes two types of definitions, namely exhaustive and non-exhaustive.

In English-language common law guidelines of legislative technique, semantic stylization is prevalent (see Canadian *Legistics* principles): "In this Act, "institution" means any international financial institution named in the schedule."[9]

Typical means of marking a defined phrase in a *definiendum* in semantic stylization include the use of quotation marks (see Alexander 2014). With regard to distinguishing the defined terms, however, the conventions are diverse, ranging from capital letters, italics, and bold print, to leaving a term without any highlighting (Butt 2013, 220–221; Garner 2001, 258). It is not common to use several distinctions simultaneously, e.g., italics and boldface, as in Australian *Drafting Direction No. 1.5* (2019).

The older practice of using the form *shall mean* in classical equative definitions has been replaced by an affirmative form of the verb in the third person singular of the present tense *means*, in order to show that the law actualizes itself on each occasion in legal statements (*law always speaking*) (Šarčević 1997, 153). Some legal theorists have been critical of this change, referring to a decline in the effectiveness of applying the definition in its new form (Bowers 1989, 177); others have argued that the previously-used modality *shall* was not of a normative nature (to prescribe a particular interpretation of the defined phrase) but was only used to express the authoritative power of the legislator, in order to establish legal norms (e.g., Driedger 1976, 13).

In contemporary English-language texts, the predominant legislative practice is to use the verb *means* as a linking phrase (defining connective) in classical intensional definitions, and the verb *includes* or *does not include* for a negative definition, which excludes certain referents from the name scope:

8. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p5.html (DOA: 4.06.2021).

9. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p5.html (DOA: 30.12.2018).

> The best and most frequent, we should say, practice nowadays, esp. in legislative texts is to use "means" for complete (intensional) definition, "includes" for a stipulated expansion in meaning (extensional definition), and "does not include" for a stipulated contraction of meaning (exclusion). (Garner 2001, 258)

Similarly, under the ULCC Drafting Conventions, *means* is appropriate for an exhaustive definition (where French uses *s'entend de*, or no linking word at all), while *includes* should be used for two kinds of definitions; those that extend the usual meaning of the defined term (the French equivalent is *assimiler à*), and those that merely give examples of the meaning of the defined term without being exhaustive (here, French generally uses *s'entend notamment de*).[10]

Other phrases are also possible in the function of a linking phrase (a defining connective stating the existence of an equality relation between the *definiendum* and the *definiens*) (Choduń 2018, 202), but they are not as universal as *means* or *includes*:

1. "refers to" (if a particular aspect of meaning is intended):
   "8. For the purposes of the schedules to this Act,
   (a) "Section", "Chapter" and "sub-Chapter" *refer*, respectively, *to* the portion of Schedule 1 that bears that appellation";

   (1) "has the same meaning" (incorporating a definition by reference):
   (3) In this section, "employee" *has the same meaning* as in subsection 2(1) of the Public Service Employment Act.

   (2) "in relation to" or "in respect of" certain things (to achieve a particular effect), for example:
   (a) to limit the application of a definition:
   "consumption", *in relation to* crude oil, means the action of using it as a fuel or energy source or consuming it in the manufacture of products of trade and commerce.
   "manager", *in respect of* an elevator, means the chief executive officer employed at the elevator by the operator or licensee of the elevator.

   (b) to allow the definition to include a particular relationship as part of the meaning:
   "commercial discovery area", *in relation to* a declaration of commercial discovery …, means those frontier lands described in the declaration.

10. *Report of the Committee Appointed to Prepare Bilingual Legislative Drafting Conventions for the Uniform Law Conference of Canada ULCC (Majority Report* https://www.ulcc-chlc.ca/Civil-Section/Drafting/Drafting-Conventions DOA: 12.08.2021).

(c) to allow the meaning of the defined words to shift depending on the circumstances addressed in the definition:
"health care insurance plan", *in relation to* a province, means a plan or plans established by the law of the province to provide for insured health services.

All examples and explanations come from Canada's official Department of Justice site: *Legistics. Definitions. Drafting Definitions.*[11]

The preferred method in the past for incorporating legal definitions into a legal act was the so-called glossary (*Definitions*) in the *Canadian Rules of Legislative Techniques – Legistics*, where explanations of statutory terms, in the form of a single sentence, were introduced with the following opening sentence: "1. In this Act/these Regulations/this Part,".

Similarly, the lead-in language to the definitions is used in American legislation: "For the purposes of this act [or appropriate subdivision of the act], the term…" (*Council of the District of Columbia Legislative Drafting Manual* 2019, 24).

Currently, each definition in Canadian legislation is formulated separately within a glossary (*Definition*s section) preceded by a sentence: "1. The following definitions apply in this Act/these Regulations/this Part." and may comprise more than one sentence (see *Legistics. Definitions. Formal Aspects*).[12]

With regard to the location of definitions, the common law guidelines are compliant that definitions should be placed at the beginning – either of the general provisions or of the relevant substantive part (*OPC Drafting Guidance* 2020, 33, point 4.1.20;[13] see also *Council of the District of Columbia Legislative Drafting Manual* 2019, 24). The British rules indicate that clarifying definitions, such as the definition of *bank holiday*, may also be placed at the end, "so that the reader can get on with reading the main story before getting bogged down in the definitional detail" (*OPC Drafting Guidance* 2020, 33, point 4.1.21). This is in line with the Anglo-Saxon technique of legislative storytelling (Finucane 2017, 18).

4.2.2 *EU law definitions*

The European Union law, like international law, as multilingual law is subject to specific rules due to the principle of multilingualism (Article 3(3) of the Treaty on European Union and the Council Regulation No 1 of 1958 determining the languages to be used by

11. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p5.html (DOA: 30.05.2021).

12. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p5.html (DOA: 30.05.2021).

13. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892409/OPC_drafting_guidance_June_2020-1.pdf (DOA 1.06.2021).

the European Economic Community), and the need to translate legal acts into all official languages of the European Union (Doczekalska 2014; Robinson 2017, 241–242). In the multilingual law of the European Union, the formal rules for the construction of legal definitions are harmonized and simplified as much as possible, in order to ensure the desired precision and unambiguity of the text.

In the Polish in-house style guide for EU translators *Vademecum Tłumacza* (2021, 89), it is recommended – through the examples indicated – to formulate classical equative definitions in semantic stylization, in line with the formula *A* means B. The *Vademecum Tłumacza* (2021, 89) gives the following examples with Polish translations (not included here):

1. *Customs office* means any office at which all or some of the formalities laid down by customs rules may be completed.
2. *Customs authorities* means the authorities responsible inter alia for applying customs rules. [emphasis added]

EU definitions in English are constructed likewise; their recommended form according to the *English Style Guide* (2021, 57) is as follows: "For the purpose of this Regulation, 'abnormal loads' means … [definition]", where in the function of the linking phrase there is only *means*. The main difference in relation to the Polish EU texts is the convention of setting off the *definiendum* using single inverted commas. On account of semantic stylization, where defined names are distinguished with quotation marks, the linking phrase *means* always has the form of a verb in the 3rd person singular, and the simple present tense. The absence of other possible conjunctions to construct definitions in the EU drafting and translation guidelines facilitates the interpretation of legal nominal definitions at least on a formal (surface) level.

The preference for classical definitions in the European Union law is also indirectly indicated in the guidelines for terminologists of the multilingual terminology database of the European Union IATE (*InterActive Terminology for Europe* – http://iate.europa.eu.) in the document *Best Practice for Terminologists* (2008), by referring to the substitution principle: "As far as possible definitions must obey the substitution principle, i.e., it must be possible to replace the term by the definition in a text". (Heading: Definition).[14]

More about EU terminology management and the IATE database in the context of quality assurance in multilingual legal acts can be found in Stefaniak (2017).

The EU legal system contributes significantly to the simplification of legal definitions, at least at a structural level. In relation to other elements of the text, the EU rules of legislative technique place relatively little emphasis on the use of definitions in legal acts, reflecting a general tendency to use linguistic expressions in their basic and commonly accepted meaning (Holland and Webb 2006, 222).

14. https://iate.cdt.europa.eu/iatenew/help/best_practice.html#general (DOA: 5.11.2018)

5. Conclusions

In conclusion, the following dependencies can be mentioned in the context of formulating definitions in normative acts which are logically and theoretically conditioned:

1. the legal system (continental versus common law), considering cross-cultural legal differences;
2. the branch and area of law (private law vs. public law in particular criminal law, international law, and EU law as multilingual law are subject to specific rules);
3. the genre of the legal text (legal act vs. international agreement vs. civil law contract). The rules applicable to legal acts are the most stringent and are usually institutionally regulated at the governmental level, and more or less formalized, e.g., in the form of binding rules of legislative technique, which to a great extent are the outcome of principles developed by legal theory, doctrine, and logic;
4. the location in a legislative act, which may significantly change the way the definition is formulated;
5. the type of legal definition (especially those distinguished by their construction, i.e., classical vs. non-classical definitions) and the linguistic and graphic conventions used.

The standardization of legal definitions in plurilingual rules of legislative technique demonstrates the endeavours of legislators to achieve maximum communicativeness, precision, and clarity in a legal act with various methods and techniques in definitions, including those inspired by the principles of plain language. These involve the simplification of definition structures (forms of definition) and the repetition of conjunctions in column enumerations; it is the latter technique of formulating definitions which tends to be preferred. This holds especially true for the common law system.

As John Swales (1981, 106) aptly stated, "[t]he definitions are – in effect – the law itself". Thus, the rigid rules of creating, shaping, and formulating definitions in law must be strictly prescribed and observed.

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