

On Questioned Document Examination in Forensic Linguistics

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Abstract

The overarching objective of this article is to contemplate on the significance of questioned document examination in forensic linguistics. Questioned document examination (QDE) is a forensic linguistics discipline pertaining to disputed documents and applying a variety of linguistic methods and tools to answer questions about a disputed document. More specifically, this article elaborates on the categorization of legal documents that are instrumental in the process of establishing the authenticity of documents in dispute.

Keywords: questioned document, questioned document examination (QDE), types of documents, legal documents.

Introduction

Language is central to legal proceedings (Tiersma 1999) and without it there would be no way to establish legal validity (Grewendorf and Rathert 2009). In assessing the linkage between law and language, O’Barr and Conley (1998:129) put it, “Language is the essential mechanism through which the power of law is realized, exercised, reproduced, and occasionally challenged and subverted.” Most of the time, law is expressed in legal discourse, i.e. in the totality of codified linguistic usages attached to a legal practice between lawyers and clients and among parties, judges, disputants and witnesses. Moreover, legal profession employs a language and terminology of its own. In pursuing the aim of interpreting that terminology, forensic linguists are employed to analyze and interpret the complex structures and planes of language system, as well as particular usage of language.

Legal English constitutes several varieties, reflecting its different roles. They are as follows:

- the language of legal documents, such as contracts, deeds, insurance policies, wills and different types of regulations;
- the language of case law, composed of spoken or written decisions which judges make about individual cases;
- the spoken language of the courtroom, with the ritual courtesies of judges, counsel, and court officials, and the constraints governing what counts as evidence;
- the language of legislature – the body (such as parliament or congress) that institutes a legal text. A pivotal role is played by the set of constitutional statements or decisions, statutes (acts), and other documents, which derived from the legislature.
- the language of judiciary – the body (the law courts and judges) that interprets and applies that text. Legal language is unique in the way its utterances are subject to sanctions, such as a fine or imprisonment for linguistic contempt of court.

Questioned Document Examination

At the outset, it should be mentioned that the convoluted nature of emergent trends has amplified a demand for a cross-disciplinary analysis of the domain of interplay between linguistics and legal studies. Namely, the discipline of questioned document examination (QDE) has emerged with this end in view as a subsection of forensic linguistics. QDE is a forensic linguistics discipline pertaining to disputed documents and applying a variety of linguistic methods and tools to answer questions about a disputed document.

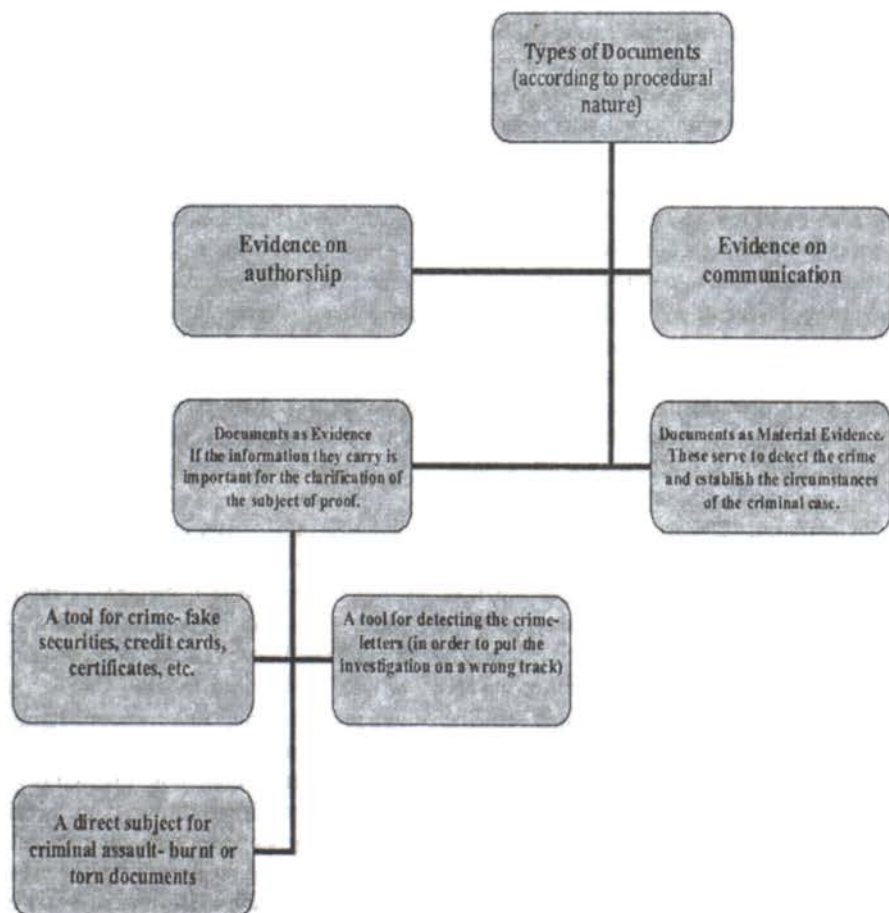
Any type of communication entails three critical elements: the linguistic forms, the situation in which the communication takes place, and the background knowledge of the participants (Gibbons 2003). Miscommunication can be caused by poor linguistic construction, by wording that is generally clear but inappropriate to the context to the extent that they are difficult to grasp, or by differences between the knowledge base of the speaker/writer and the hearer/reader. Effective communication involves choosing the best wording to communicate an intended meaning to a particular participant in a particular context, taking into account the effects of distance from context. Evidence from linguists is often concerned with what a text means and whether a participant or a group of participants can understand a particular text.

The rationale for elaborating on the types of legal documents and their categorization is predicated by the fact that a forensic document examiner studies all aspects of a document to determine its authenticity and origin. As an established subfield of forensic linguistics, QDE came into existence as a means of identifying forgery and establishing the authenticity of documents in dispute. The discipline is mainly known by different names, including *forensic document examination*, *document examination*, *handwriting examination*. The examination of questioned documents relies on the scientific study of physical evidence of a document. A document examiner is often asked to determine if a questioned item originated from the same source as the known item(s), and then to present their opinion on the matter in court, law enforcement investigations, prosecutions and in civil litigation as an expert witness.

Mcnemamin (2002) suggests that physical evidence that assists in the questioned document examination process to reveal the development of a document is observed in a number of ways: the writing instrument or writing implement (i.e. pen, ink, pencil, computer, etc.), the writing surface (i.e. paper, notes, etc.), and information about the author (i.e. physical position, physical, mental or emotional state, etc.). For handwriting, the forensic document examiner observes various features: letter size, formation and relative proportions, and letter slant, spacing, pressure, line quality, connecting strokes, etc. For typing, the document examiner observes characteristics of the typeface, font style, spacing between letters and lines, and association of a document with a particular machine or type of machine, i.e. typewriter, printer or copier. Common criminal charges involved in document examination include identity theft, forgery, counterfeiting, fraud or uttering a forged document. A questioned document may be a sheet of paper bearing handwriting or mechanically produced paper such as a ransom note, a forged check or a business contract.

The basic objective of QDE is to determine whether a particular author has produced that particular spoken utterance or written text. The text produced by the author may be spoken or written. Sometimes the issue may concern to whether the person produced all of a text or only parts of it. The basic methodology is to obtain comparison texts definitely produced by the author whom that sample is attributed to, and then compare them with the questioned texts for similarities and differences.

Forensic document examiners define the word "document" in a very broad sense as being any material bearing marks, signs or symbols intended to convey a message or meaning. Some forensic document examiners limit their work to the examination and comparison of handwriting, but most of them inspect the whole document. Thus, documents as written evidence may serve as a tool for crime, for detecting the crime or a direct subject for criminal assault.



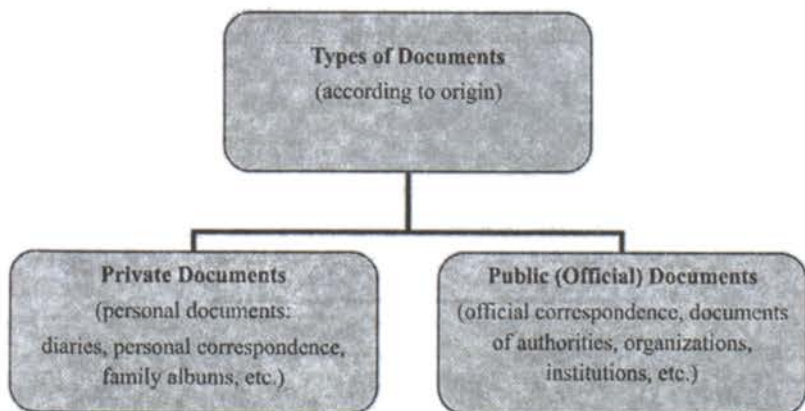
Legal Texts: A legal text differs from ordinary speech in style, constructions and language used. This is especially true of authoritative legal texts, i.e. legal texts that create, modify, or terminate the rights and obligations of individuals or institutions. Authoritative legal texts come in a variety of genres. They include documents such as: constitutions, contracts, deeds, orders/judgments/decrees, pleadings, statutes, and wills.

Each genre of legal texts tends to have its own stereotypical format; it is generally written in legal language (or "legalese") and usually contains one or more legal speech acts that are meant to carry out its intended functions (Tiersma 1999). Thus, a contract almost always contains one or more promises, a will contains verbs that transfer property at death, and a deed transfers property during the lifetime of its maker. Like other styles of language, this style has a definite communicative aim and accordingly employs its own system of interrelated language and stylistic means. The main objective of this type of communication is to state the conditions binding two parties in an undertaking. The binding mainly comprises the relationship between the following parties:

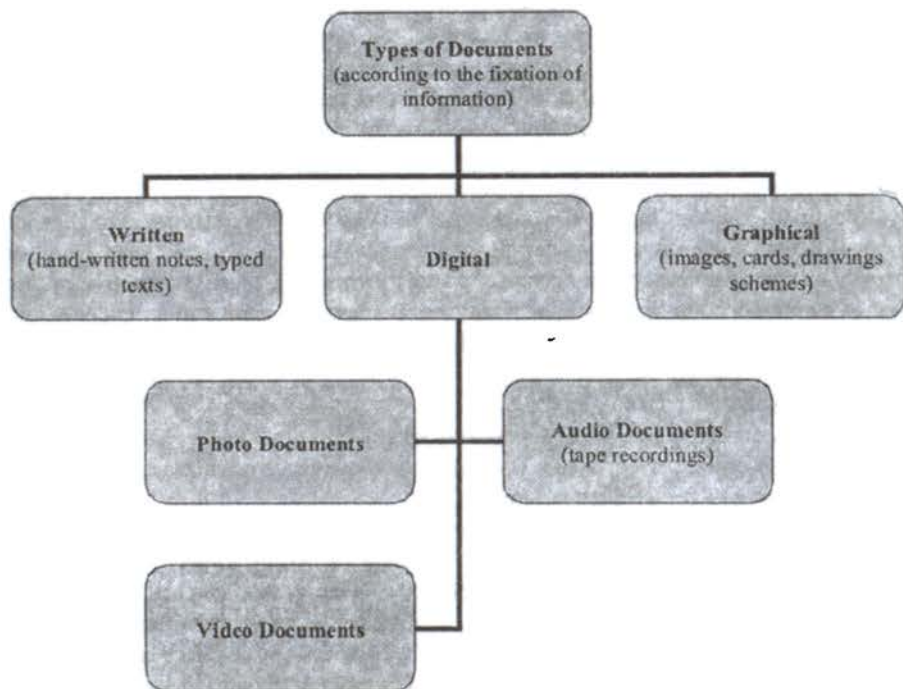
- the state and the citizen,
- the citizen and citizen (jurisdiction),
- the society and its members (statute or ordinance),
- two or more enterprises or bodies (business correspondence or contracts),
- two or more governments (pacts, treaties),
- a person in authority and a subordinate (orders, regulations, authoritative directions).

Forensic Analysis of Documents: Forensic analysis of documents is a domain in forensic techniques that studies the methods of preparing documents, patterns of changes of their content and requisite, characteristics of the writing. It develops and improves methods of questioned document investigation in order to detect and investigate crimes.

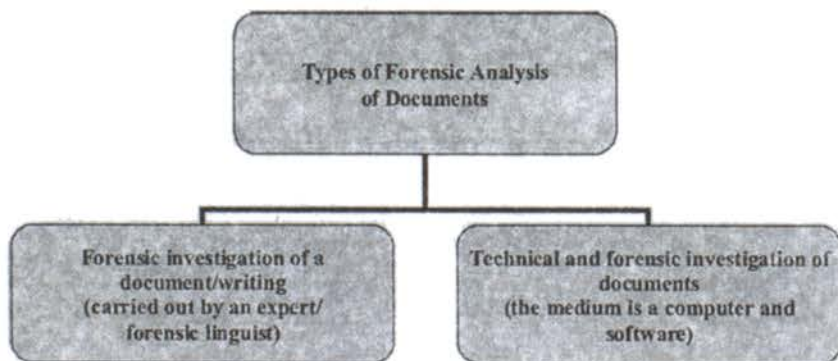
In forensic studies a document is a carrier for information of judicial importance. According to origin, there are two types of documents: private and public or official documents.



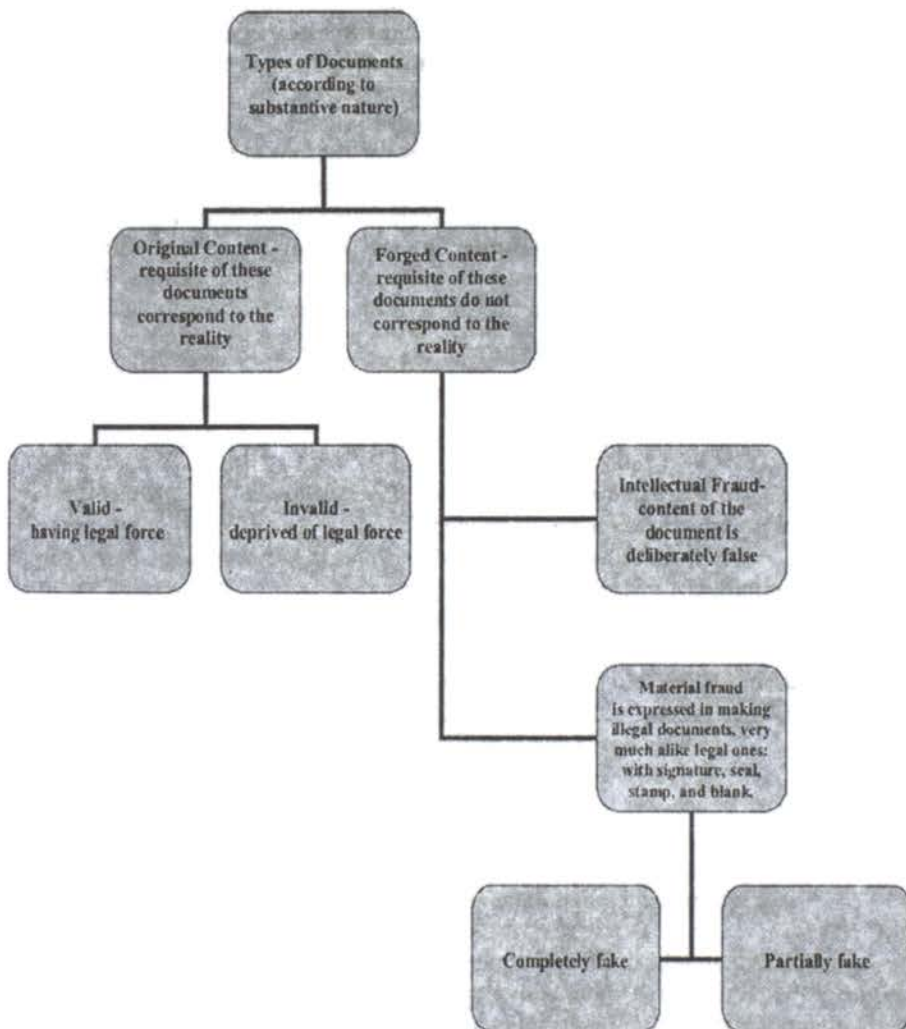
According to the way information is fixed, legal documents are classified into three groups: written, digital and graphical.



Forensic investigation of writing as a domain of forensic analysis of documents deals with examining patterns of formation, development, operation of written language and handwriting. It develops the methods of investigation of written language and handwriting in order to identify the author, or to reveal other facts important for the court procedure.



According to substantive nature, there are two types of documents: original and forged.



Conclusion

As linguistic data suggests, legal English incorporates the use of linguistic concepts and tools by means of which textual evidence can be described and explained. Setting legal phenomena into a linguistic context, legal professionals naturally search for understanding about why events happen, especially when the outcome is important or unexpected, make inferences or attributions about causes and then put all the events in

chronological order. The overall code of legal English falls into a system of subcodes, each characterized by its own terminological nomenclature, its own compositional form and variety of syntactic, semantic, pragmatic arrangements. All claims made in this article are subject to further empirical investigation since questioned document examination constitutes an undiscovered domain, which has the potential to reveal new findings about structures and usage in different contexts.

Questioned document examination relies on the scientific study of the physical evidence of a document. Previous studies on the topic of questioned document indicate that the examination for authorship attribution includes numerous characteristics of writing style. Recent studies, however, are drawing a sharper line between questioned document and the elements of writing style that overlap into the field of linguistic stylistics. On the other hand, the line between questioned document and stylistics is sometimes determined by the significant absence of a stated role for style characteristics within the questioned document examination.

References:

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Կասկածելի փաստաթղթերի քննության խնդիրը դատական փորձագիտական լեզվաբանության մեջ

Հոդվածի նպատակն է ներկայացնել դատական փորձագիտական լեզվաբանության մեջ կասկածելի փաստաթղթերի (փաստաթղթի տվյալների իսկության) լեզվական քննության կարևորությունը և ներկայացնել փաստաթղթերի այն դասակարգումը, որն առանցքային նշանակություն ունի իրավական կասկածելի փաստաթղթերի իսկության, մասնավորապես ենթադրյալ հեղինակին դրանց պատկանելու փաստը հաստատելու գործում:

О судебной экспертизе документов в судебной лингвистике

Целью данной статьи является рассмотрение значения судебной экспертизы подлинности документов в судебной лингвистике. Рассмотрение подлинности документов является дисциплиной судебной лингвистики, которая изучает оспариваемые документы и использует множество лингвистических методов и способов для ответа на вопросы, касающиеся указанных документов. В частности, данная статья рассматривает категоризацию документов, которые играют важную роль в судебной экспертизе при установлении авторства и подлинности документов.