

Standard versus Custom. Language usage in court judgements in China

Tian Lizhi, Shandong University, Jinan, China

1. Introduction

Legal documents are meant to be practical and official tools that fulfil a unique objective as instruments of communication. From the point of view of language usage, the style of expression contributes towards the authoritativeness of court judgments. The latter are extremely important legal documents since they contain the formal decision made in a court of law to resolve a particular legal problem. As such judgments are legal documents that are to be enforced by the state in a way that reflects the dignity and authority of the country's judicial system. When composing judgments, strict attention should be given to the elucidation of evidence pertaining to the case. These judgments should be written in a vernacular and style that can stand the test of time. Language thus plays a pivotal role in this regard. Not only should the language usage be simple, unadorned and fluent in accordance with the requirements of general official documentation, but it should also reflect the field of specialization in so far as the relevant terminology and jargon are concerned. In reality, however, jurists tend to deviate from the practice of standard language usage. This article examines a few cases that provide evidence of a conflict that exists between the standard rule of practice and what has become the customary practice.

2. The conflict between standard vocabulary and regional dialect

Vocabulary constitutes the basic material of any writing. All trades and professions have their own distinct terms. Judicial documents can be regarded as using the strictest of professional vocabularies within the strongest of terminological environments. The vocabulary drawn on to establish the correct atmosphere can be classified into three broad kinds: standard legal terminology, general standard legal terminology, and restrictive general vocabulary.

Standard legal terminology refers to the vocabulary that is appropriate within the ambit of legal science and whose meaning is precise and of simple semantic derivative. This terminology provides the backbone for the vocabularies pertaining to legal documents. For

example, the different participants in a civil lawsuit are referred to as the Plaintiff, Defendant, Third Party, Appellant and Petitioner. Each of these terms has an accurate intension and extension provided for in Civil Procedure Law. The general standard legal terminology on the other hand refers to a kind of legal terminology that generally uses ordinary terms and ordinary language (extending to the language environment beyond the domain of judicial communication). For example, the term “mystery” originally referred to a legal case where the facts were not clear and where there was a lack of evidence making judgment difficult to pronounce in the interim. However, the word was used in general language later in reference to an incident or a circumstance that was inadequately understood and could not be defined. This kind of terminology can be considered as different from the standard legal terminology, while still operating within the domain of judicial communication. What is called restrictive general vocabulary refers to vocabulary that is incorporated into the judicial document in order to qualify a matter or to enrich and replenish the particular field of specialization. This kind of vocabulary is used extensively in various fields.

Of these three kinds of vocabulary the standard legal terminology is the kernel of legal documentation. General standard legal terminology takes second place, while the third kind of vocabulary only plays an auxiliary role to the first two kinds.

Dialects and slang found in literary works can help to portray typical characters and circumstances. For example, in *Hong Low Meng* the enormous usage of dialects and proverbs ingeniously shows the superb ability of the author to master the national language. However, judicial documents are supposed to use the standard vocabulary of the commonly spoken Chinese vernacular. Dialects and slang are prohibited. Once they are allowed to appear in a court judgment, the solemnity, accuracy and legal style of the document are destroyed. Consider the following examples:

(1) In the third of December 1995, the accused once returned the “*Niang men*” for some reasons. Later after patching things up between them by the clansman of the plaintiff, the accused and the plaintiff became reconciled. In the third moon of 1997, the accused and the plaintiff stirred up troubles once again for some reasons, and the accused taking the legitimate boy returned “*Niang Men*” to live. Henceforth, the plaintiff and the families have not met the accused. (TengZhou, 1997: 106)

(2) It was found out by trying that in December, 1996, the two accused rent the granite ore in *Chijiazhuang* village of *WangShitong* country in partnership, and the mining gang

master was Chi in *Chijiazhuang* village. In the 16th of December, for easy to manage, the two accused (the first party) and the representative of the six persons including the plaintiff inside (the gang master) Chi signed a contract. (WuLian, 1998: 86)

(3) It was found out by trying that in the 16th of July, 1988, the two parties signed “The written agreement of joint operation” to found YanSi Canvas Factory in partnership. It was fixed in the agreement that each side 50 percent in the investment, the loss and the profit. During the period in partnership, Liu Shangjiu was responsible for the business in the South and LiuJun was in charge of the business in the North. Liu Shangjiu’s “*Lianjin*” Wangqun was the accountant, and the sister of LiuJun’s wife Zhangling was the cash storekeeper. (LiaoCheng, 1997: 563)

(4) Because of lacking understanding before marrying they disagreed with each other in household affairs after marrying. In the ninth of March 1997, the accused and the plaintiff argued because of the problem “*HuiMen*” in the fourth day of the month and the plaintiff returned her parents’ home to live. (DeZhou, 1997: 646)

The four examples above are from the factual part of four civil judgments. In example (1), “*Niang Men*” refers to the home of the parents of a married woman. “Gang master” in example (2) has the same meaning of the person in charge. In example (3), “*Lianjin*” is the husband of the sister. “*HuiMen*” in example (4) has the same meaning of returning to the home of the married woman’s parents. These words come from a dialect. They have been mixed into the context and not only bear strong local (Shan Dong) sentiments of colour and disharmony, but run contrary to the style of canonical written language. They destroy the gravity and authoritativeness of the document. In examples (3) and (4) we find relatively standard words: “the sister of LiuJun’s wife”, “returned her parents’ home to live”, etc. These create a sharp contrast between the standard words and non-standard words, providing for even more embarrassment. Other examples in the text are expressions such as “sharing the booty” by “*Biao Fen*”, “talking with each other” by “*Baitan*”, and substituting “playing” for “walking”. The constant use of non-standard words diminishes the quality of the document. Only by correcting the dialect of these judgments to standard written language form can there be any suggestion of a unitary language style.

3. The conflict between written and spoken vernacular

Spoken language has a different style to that of written language and is aimed at somebody or something. Usually the vocabulary can be adapted and the sentences are short and loose. Spoken language is not always exact, and may contain non-standard utterances. The nature of the language usage is casual and there is a strong dependence on context. In written language the vocabulary reflects standard usage and the sentence structure is tight and integrated, emphasizing the logicity of the expression.

On the whole, judicial documents (except in the case of record documents such as interrogation records) use the spoken style, as do narrative documents and documents for tabling. The court judgment, on the other hand, is a typical judicial and official document employing a formal written style of language. The vocabulary is tight, integrated, systematized and coherent. The chosen words are standard and the sentences are exact and logical. Restrictions are imposed in a judgement on using dialects and spoken language. However, it is very clear that in judgments the phenomenon of spoken language is still being used and this kind of non-standardized language has become a fatal enemy that is weakening the solemnity of court judgments. Let us examine further examples:

(5) The judgment of the lower court holds, (...) in the ninth of February, 1997, the accused and the plaintiff argued because of the problem that returning the woman's parents' home in the fourth day of that month, and the plaintiff returned her parents' home to live, and in the 28th, February of the same year went to the defendant's home to carry the property before marrying that she believed belonged to her own as The SAMSUNG 29 *cum* colour TV set, the SAMSUNG sound, and the articles for daily use such as the tea set and the water cooler, etc to her parents' home. The Lucheng motorcycle was not carried because it was used by the accused at that time and it is in the defendant's home now. (DeZhou, 1997: 646)

(6) It was found out by trying that, in the morning of the 18th of May 1997, the plaintiff Lili met Xuqiang on his way to work to WenShang. XuQiang said to Lili, we are lumbering in Baliqiao primary school now and no one to cut the branch, and asked Lili if he would do it. Lili agreed and went home to tell his families, then borrowed the saw from the neighbour and went to Baliqiao primary school. Lili arrived there and found no work to do; when he planned to leave, Cuiyou said, "don't go, and work here, since you will get

wages.” Lili dismissed the idea to go back and put up the pot and cooked and cut the tree trunk following Cuiyou’s instruction. ... Then at about half past four in the afternoon Lili has his head squashed by the tree being cut down then when he was cutting the tree trunk on the scene of lumbering, and he remained unconscious. (WenShang, 1997: 35)

(7) The court believes that the written agreement of helping to settle down the people for dismantling and moving signed by the plaintiff, a certain general company of real estate industry development, and the accused, is legal and effective; the plaintiff and the accused should perform conscientiously on the agreement. Because of the plaintiff’s slipping up in the work of helping to settle down the people who moved back, the accused could not move back on time and it caused certain economic losses to the accused. The plaintiff should bear the civil liability for it and should give the accused proper compensation for the economic losses caused when they moved back home. But the amount of loss caused when they moved back home that the accused claimed to be compensated by the plaintiff is excessively high and is baseless, the court do not support it. Now the accused that possess the requirements to move back home should move back and vacate the ground floor house that borrowed temporarily which was arranged by the plaintiff; the accused found an excuse to refuse to vacate it and move back for other reasons, it is groundless. (JiaoNan, 1998: 51)

The three examples above are from three civil judgments. Examples (5) and (6) reflect the spoken phenomena as they appear in narrating the facts of the two cases, and example (7) reflects the spoken phenomena that form the basis of the judgment. The spoken expressions usually rely greatly on the contexts. The sentences are short and loose and often do not have precise meaning. The sentences also contain unnecessary words and are obviously written in a casual style. In example (5), “(...) was not carried”, we have to rely on the context to infer that the subject is “the plaintiff”. Because there are too many sentence elements (between the subject and the rest), the expression is sluggish and incoherent. The phrases “was used” and “was not carried” belong to two different subjects that have been juxtaposed hastily, reflecting the writer’s very subjective casualness. This runs contrary to the required standard. Example (6) involves a case of compensation for personal injury. In the example provided the narration tells how the plaintiff Lili was hired by the accused, Xuqiang and Cuiyou, but its form is completely colloquial with short and loose sentences that lack the appropriate conciseness expected of a judgment. Example (7) concerns a case of vacating a house and

relocating. Judgment discussed in the example analyzes and demonstrates the responsibility and requests of each party. The analysis is clearly set out point by point, and generally presents a style of meticulous and systematic written language. However, it contains a colloquialism (“is (...)”) that is not in harmony with the style of the context. If it could be replaced by “has no proof within reason”, the effect would be much better. Moreover, the statement “(...) found an excuse to (...) for other reasons” amounts to duplication and verbosity and should be revised as “the accused found an excuse to refuse to vacate it and move back home”. The superfluous “for other reasons” should be omitted.

However, although the judgment has to exclude spoken language, some ancient Chinese vocabulary has been incorporated. For example, monosyllabic words, disyllabic words, and phrases of four-word structure have been used:

For example: the court believes, the accused Zhang ignored the national law and at the time of strengthening building honest politics and rectifying unhealthy tendencies, took advantage of his position and power, accepted the bribery for 31 times and the number is huge; moreover he figured illegal interests for the persons who bribed him, which has constituted Acceptance of Bribes and should be deep in punishment originally. But in consideration of the accused confessing initiatively the main facts the prosecuting attorney do not keep abreast of; surrendering positively all illicit money; informing against others’ offences; making contributions and showing repentance, the court decides to accept the suggestion of the accused and his defender.

In the example, some monosyllabic function words such as “but” and “and” (in Chinese “Dan, Ji”) are used which have no inherent meaning, but perform a grammatical function. Combining these words in accordance with the context will result in a richer and more logical statement. If they are changed to disyllabic words (in Chinese “Danshi, Yiji”, etc.) the meanings will not change, but the conciseness of the monosyllabic words will be lacking. Also found in the example is a sentence structure of ancient style prose, some disyllabic words of classical Chinese, and a monosyllabic word “Qi” in Chinese which are succinct and definite, although somewhat solemn and rigorous. Ancient Chinese is a highly concise language which can use the least of words to convey the richest of information. Using it properly can help to strengthen the elegance and solemnity of the judgment.

4 The conflict between sentence structure and the desired rhetorical effect

Different structural styles can be used in spoken language to express the same meaning, but the effect of the expression may differ. Structural styles can be selected according to the effect that is desired. There are various synonymous sentence styles to choose from in Chinese, for example: common or variable word order, long or short structure, loose or tight organization, and rising or falling tone. However, these all have different effects in terms of emphasis, meaning, tone and quality.

Usually the emphasis is placed on declarative statements in judicial documents so as to state the cases exactly and objectively. Few imperative sentences are used and hardly any exclamatory sentences. With regard to the structural aspect of the sentence style, we usually use loose sentences more frequently than tight sentences. Loose sentences, which may be long or short, are flexible and can express different meanings. Complete sentences are required to have the same structures and orderly formation and are restrictive.

Although complete sentences are usually used to express strong feelings in poems and essays, they are seldom used in judicial documents, with the exception of indictments. It is customary to use both long and short sentences in judicial documents. Let us examine the following example:

Example 5, Wang, a private prosecutor, makes a complaint against the defendant Li for the reason that Li commits manslaughter and Wang requires the court to punish Li and compensate the economic damage he has suffered. The court accepts the case and Judge Zheng himself tries the case publicly. The private party Wang, the defendant Li, defender Liu, witness Lin take part in the case. The case has been finished already.

The above example contains four sentences. The first three are long sentences. In the first sentence the preposition “for the reason that” is used as a long adverb. In the second sentence there is a long adverb before the predicate “tries”. In the third sentence the subject is a coordinated structure. In general, long sentences are exact, clear and detailed and contain modified phrases, combined elements and intricate content. They are thus more solemn by nature and eloquent in style.

In judicial documents long sentences are usually used for motivational purposes. These can become dull and rigid, while short sentences provide the balance. With fewer words and a more simple structure, short sentences can state facts in judicial documents in a

vivid and vigorous manner. We use long and short sentences alternatively to complement one another and to enrich the language. Irrespective of the type of sentence chosen, it should always be in keeping with the nature of the judicial document and the meaning conveyed should be precise and without ambiguity. Let us examine a few more extracts from actual cases to illustrate how the effect of the rhetoric can be diminished through sentence structure:

(8) The appellant claims that, in the first instance, the appellant had supplied many proofs to prove that the paint factory was a joint venture operated by the appellant and his partners, but the first instance court didn't accept the fact. The court held that the paint factory was a collective factory and made a decision that the appellant should take the responsibility of the debt the joint venture owed. The appellant believes the court accepted the wrong fact and applied the wrong law, so the appellant requires the court to make the fact clear and reject the appellee's petition. (ShanDong, 1998: 14)

(9) The existing danger in the night when the case occurred was proved by the site investigation the defendant made and the examination made by the quality-testing department. (JiNan, 1995: 45)

(10) Wang Lili was close to death in hospital, so plaintiff Chen Ming and her two sisters took care of her the whole day. Wang Lili's kins were the plaintiffs in the case, Wang has seven sisters. After Wang died, the plaintiffs and the defendant couldn't make a compromise about the compensation, which incurred a defence. (JiNan, 1997: 167)

(11) Lu Liang was found to convulse for the second time without reasons and to be dull after he was out of hospital. After treatment of several hospitals, it was concluded that he suffered sequelae of brain trauma and traumatic epilepsy. The electroencephalography appears anomalous intermediately electroencephalography. He spent 313 Yuan on the transportation and accommodation. (DeZhou, 1998: 138)

There are grammatical errors in the four examples above which need revising. In the first example, the judge doesn't have the ability to control the long sentences and as a result the sentence elements get entangled and lack coherence. Moreover, the sentences contain too many modified elements and are difficult to pronounce. This is not in keeping with modern Chinese vernacular. The adverbial modifier between the subject and object should be

separated into a short sentence. The second sentence contains the same error as the first. The elements after “the night when the case occurred” are ambiguous and should be revised to “the existing danger was proved by the site investigation the defendant made on the night when the case occurred”. The meaning of the first sentence in the third example seems to be without grammatical errors, but it is difficult to determine the relationship between all the sentences in this extract. In the fourth example the word order is complicated and jawbreaking and in need of simplification.

5. Conclusion

Apart from the problems identified in this article, it has also become the custom to use abbreviations. Moreover, digital numbers are not being used properly and there are instances of wrongly written words. In order to change the situation back to a standardised form and render work of a high quality, there is a need to correct the diathesis of the Chinese judges. Without this we will not be able to improve the quality of our court judgments.

References

- Chen Wangdao (1979). *Rhetoric Inchoation*. Shanghai: Shanghai Educational Publishing Company.
- Tian Lizhi (1996). *Judicial Document Course of Study*. Jinan: Shandong University Publishing Company.
- Tian Lizhi (2007). *Context Restricted Factors of Lawmaking Language*. Shanghai: Rethoric Learning.
- Tian Lizhi (2008). *Legal Writing*. Jinan: China People of Shandong Press.