

Counterfactual conditionals in argumentative legal discourse: a cognitive linguistic analysis

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Legal argumentation serves to resolve a difference of opinion between two or more legal parties by determining what are the facts in a lawsuit and finding an appropriate legal interpretation for these facts. Some of the discussion moves in legal argumentation take the shape of counterfactual conditionals (CTFs). CTFs are conditionals with an antecedent that contains conceptual content not corresponding to assumed facts in perceived reality. In this paper we provide a structured overview of how such non-fact-based CTFs can contribute to resolving a legal and fact-centered difference of opinion. We do so by presenting a bottom-up corpus-based typology of CTFs in lawyers' conclusions and in judgments in civil cases heard by Dutch-speaking Belgian courts of law.

The typology we argue for is based on an in-depth mental space analysis (Fauconnier 1994, 1997) that takes into account both the constructional patterns for construing negative epistemic stance in CTFs (along the lines of Dancygier & Sweetser 2005) and the complex viewpoint constellations involved in two- or more-party legal cases. At the argumentative level of negotiating the truth status and legal interpretation of proclaimed facts, we focus on the grounding of facts in the base space (or reality space) of the mental space network: for rhetorical purposes, legal parties may accept facts as given in the assumed shared base space that are actually debatable, but which are crucial to the counterfactual argument.

The analysis yields two broad types of CTFs, the first of which aims at establishing a causal link between facts that are presented by the speaker as given. Dependent on the type of conceptual content presented in the CTF's antecedent and consequent, this causal link may be put forward either with the intention of proving or disproving liability or with the purpose of establishing a defendant's bona or mala fides. The second type of CTF is typically aims at proving or disproving certain disputed "litigious" facts in a legal case. A cognitive linguistic analysis in terms of different mental space configurations provides a detailed account of the rich interpretational semantics involved in both subtypes.

KEY WORDS: counterfactual conditionals, cognitive linguistics, mental spaces, legal argumentation

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