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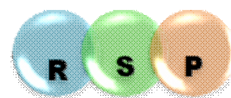

ORIGINAL PAPER

Linguistic and Conceptual Considerations on Some Tort Law Terms

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Abstract:
Legal terminology consists of terms containing specialized information and knowledge in the legal domain. Ideally, terms are characterized by univocity, monoreferentiality and precision, reflecting the relation between name and notion, while acquiring conceptual independence regardless of any context. The terminology of tort law brings forward concepts imposed by terminological definitions. We have selected several tort law terms (23 simple/one-word units) for a linguistic (etymological, lexical, semantic) analysis, which obviously involves legal considerations. Morphologically, they are nouns, and terminologically, they represent terms which strictly belong to the legal sphere and the law of torts (such as *tort* or *tortfeasor*), terms which are used in various domains, the legal one included (e.g. *conversion*), or in different branches of law (e.g. *claimant, defendant*), or terms from the common language which migrated to the legal language (e.g. *compensation*). Semantic relations of synonymy, antonymy, polysemy and hyponymy are also analysed.

Keywords: *legal terminology, tort law, etymological analysis, lexico-semantic analysis, conceptual analysis.*

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1. Preliminary remarks - law and language

The relationship of law to language is profound and ancient. These two phenomena, both rooted in custom, share a number of characteristics (Guță, 2006: 10) and make the object of various disciplines such as: legal philosophy or sociology, legal logic, psychology, ethics, etc. Legal linguistics, a multifaceted and interdisciplinary field, reunites both linguists and lawyers and brings the study of law and language beyond the mere interest relating to the vocabulary of law (Galdia, 2021: 19).

On the other hand, the study of the specialized vocabulary of law is privileged by terminology, a discipline that deals with specialized communication in a specific domain (Bidu-Vrănceanu, 2010: 13), a (sub)set within which each term clarifies its meaning in relation with other elements of the same lexical series and in specific syntagmatic combinations (Stoichițoiu-Ichim, 2006: 110).

Any specialized lexicon is made up of words relating to a specific activity, a scientific and professional field and is used by a group of speakers against the background of social, professional, cultural existence. Both specialized languages and the common language form a unitary whole, i.e. the vocabulary of a language, and there is a constant process of migration between the two registers. Common language words specialize in a certain domain and terms from specialized domains are more and more absorbed into the common language (Pitar, 2018: 44-45).

The vocabulary of torts represents an essential component of legal terminology, bringing forward concepts imposed by terminological definitions.

We have selected several tort law terms (confining to simple/one-word units) for a linguistic analysis, which obviously involves legal considerations. Morphologically, they are nouns, and terminologically, they represent terms that strictly belong to the legal sphere and the law of torts (such as *tort* or *tortfeasor*), terms that are used in various domains (e.g. *conversion*), or in different branches of law (e.g. *claimant, defendant*), or terms from the common language used in the legal language (e.g. *compensation*).

In addition to the descriptive and explanatory research method used for the study of specialized tort terms, based on the synthesis of the large amount of information we consulted, we also employed the method of structural analysis, enabling the delimitation of simple terminological units, as well as the method of semantic analysis and the distributional method, fostering the identification of the semantic relations established between legal terms, the formal and etymological analysis, which proved once again the preponderant Romance origin of legal terms in English.

2. The conceptual system of torts: a linguistic-conceptual analysis of some terms

"A domain cannot be an arbitrary collection of terms, it forms knowledge structures, structures of concepts with their names, in which each concept is related to one or more concepts forming coherent systems. (...) A certain set of knowledge can be organized differently depending on the domain through which it is perceived." (Pitar, 2018: 105)

A specific domain, in our case the legal one, is the starting point for the configuration of a conceptual system. It is divided into subdomains between which various relations are established and each subdomain, in turn, 'presides over' the relations between its defining concepts.

The conceptual subdomain of torts is subsumed to the conceptual domain of law. Within it, concepts are not isolated, they are strongly connected with each other, and these close relations lie at the basis of the very existence of the tort conceptual system, reflecting its organisation and a network of semantic relations that we will try to outline below.

An important part of the tort system is represented by the so-called **purely technical terms**, or terms exclusively pertaining to the legal sphere. These terms are characterized by univocity, monoreferentiality and precision. A term reflects the relation between name and notion, it is conceptually independent and has a stable content beyond any context (Bidu-Vrănceanu, 2010: 20).

Such a term, which is situated at the core of the subsystem subject to our analysis, is **tort**. In Middle English, it meant "injury", from Old French *tort* "wrong, injustice, crime", from Medieval Latin *tortum* "injustice". The specific legal meaning "breach of a duty", enabling a person to sue for damages, dates back to 1580s (OED).

The equivalent of the modern term tort in medieval times was trespass and at that time tort had a wider meaning. It was a wrong indicating "any kind of legal injury" (Baker, 2007: 401). By 1663 it underwent a process of narrowing of meaning, being classified by legal indexes under 'actions on the case' (Baker, 2007: 402).

A tort is a civil wrong which entitles the injured person to claim damages for his loss. It should be contrasted with crimes, which are also wrongs, but they are prevented by the State by means of punishments in particular. Similarly, a tort may be a breach of a legal duty, but it is not a breach of contract. "Whereas contractual duties are imposed by the parties to the contract themselves, the duty to refrain from committing torts is imposed by the general law of the land" (Shears & Stephenson 1996: 303), regardless of what the claimant or defendant believes.

The fact that a tort is a wrongful act, like many acts or omissions occurring in various branches of law, explains the presence of some tort-related terms in other legal areas and even in other domains of knowledge.

The term **tortfeasor**, also a purely technical term, is not a compound built in English, but a borrowing. It comes from Old French *tortfesor*, from *tort* "wrong, evil" + *-fesor* "doer", in turn from Latin *facere* "to make, to do" (OED). It describes the person who commits a tort.

Another example is **injunction**. At the beginning of the 15th century, it was borrowed from Late Latin *iniunctionem* "authoritative command" (MWD). An injunction is a writ/ order granted by a court and prohibiting someone from doing something. In certain situations, it constitutes a remedy for the commission of a tort.

Internal polysemy characterizes those legal terms with two or more meanings in the field of law, in current usage (Cornu, 2000: 95) within the same law branch or in different law branches (Stoichițoiu-Ichim, 2006: 119). Thus, the term **claim**, whose oldest sense as a noun is legal (c. 1300), "a demand of a right; right of claiming", from Old French *claime* "complaint", *clamer* "to call; to complain; to declare", from Latin *clamare* "to proclaim", acquired an insurance law meaning in the 19th century ("a demand for something due") (OED).

The term **conspiracy**, in mid-14th century, referred to an unlawful plot meant for an evil purpose, from Anglo-French *conspiracie* "conspiracy", from Latin *conspirationem* "agreement, union" (OED).

A conspiracy may be a tort (aiming at injuring a third party, at causing loss to this party), or a crime ("an agreement between two or more people to behave in a manner that will automatically constitute an offence by at least one of them", ODL, 2022: 157), it is therefore used in both tort law and criminal law.

Trespass (c. 1300), meaning "a transgression", comes from Old French *trespas,* from the verb *trespasser.*

Historically, trespasses were one of the two main categories of torts. The other referred to actions "on the case". Trespasses, caused directly and forcibly, were the earliest torts recognized and remedied by law (Shears & Stephenson, 1996: 303). At present, trespass denotes direct and immediate interference with a person, goods or land. It developed two meanings within tort law: 1. "an unlawful act committed on the person, property, or rights of another; 2. the legal action for injuries resulting from trespass" (MWD).

External polysemy resides in the fact that terms belonging to the legal vocabulary function, based on identity of meanings or partially modified meanings, in the general vocabulary as well (Stoichițoiu-Ichim, 2006: 115). Depending on the primary significance, there are two developments: (1) terms that were originally part of the common language underwent a process of **specialization of meaning**, turning into legal terms. The legal meaning became entrenched, but the general vocabulary meanings were preserved, either secondary or figurative; (2) legal terms entered the general vocabulary through a process of 'determinologisation'.

The first category prevails. A good example is the term **breach**. Its etymology is Old English *bryce* "a fracture, act of breaking", from Proto-Germanic **brukiz*. It was a noun from **brekanan* (source of Old English *brecan* "to break"). The Middle English *breche* was borrowed from Old French *breche* "break, gap". The legal sense referring to the violation of rules was in Old English, whereas *breach of contract* goes back to 1660s (OED, MWD).

The term can therefore be found in both common language (as in *breach of the skin, breach in the fence, breach between two countries)* and legal language, where it developed a specialized meaning. In the latter, it may be the breach of the duty of care, justifying a claim in negligence (in the law of torts), but it can also be a breach of contract, a breach of confidence, a breach of statutory duty, a breach of trust, etc. In tort law, the defendant's omission to take reasonable care to avoid the harm results in a breach of duty which gives the claimant a right to sue, a claim in negligence.

Negligence ranges among the general vocabulary words that developed legal meanings. It meant "disregard of duty, indifference" (mid-14 century), *necligence*, from Old French *negligence* "negligence; injustice", from Latin *neclegentia*, *neglegentia* "carelessness" (OED).

As a legal term, it is perceived from a double perspective: "the attitude of mind of a party committing a tort" and the tort itself (Shears & Stephenson, 1996: 315). It is a wrong which signifies the breach of a legal duty to take care, a duty owed by the defendant to the claimant who has suffered an injury, a loss.

The duty of care exists in many situations, e.g. drivers of motor cars owe the duty to drive carefully to all those using roads. Every person must take reasonable care not to perform acts or omissions likely to harm the people around and must reasonably foresee the injury entailed by the respective act or omission.

With the sense "injury, harm", **nuisance** was borrowed from Anglo-French *nusaunce*, Old French *nuisance* "wrong, damage", from Latin *nocere* "to hurt" (OED). It semantically evolved to refer to something unpleasant, disagreeable.

It started as an ordinary word and in the mid-fourteenth century nuisance was covered by the wider concept of trespass. It came to indicate annoyance or wrongful disturbance in the enjoyment of real property or of rights over real property, lacking however the forcible element (Baker, 2007: 422).

The second category, that of determinologisation, is not equally large. For instance, the term **claim**, which is found in several law branches, is also characterized by external polysemy. It started as a legal term and it later entered the general vocabulary, where it is used with the meaning "an assertion open to challenge; something that is claimed" (MWD).

A particular case is that of **interdisciplinary terms**, manifest in the conceptual structure of several domains.

We will further illustrate this category by the term **conversion**. The first meaning was related to religion (14th century), designating a spiritual transformation, by renouncing sin and embracing the love of God, or by changing religion, from Old French *conversion* "entry into religious life", from Latin *conversionem* "alteration" (OED). It later enlarged its meaning, being used in the general sense of "transformation".

The term is used in other domains, such as logic or mathematics, relating to a theorem or proposition.

In law, it can be seen as "the civil counterpart of the crime of theft" (Shears & Stephenson, 1996: 328). It is the wilful taking of and dealing with another person's goods.

Liability was first a legal term implying "the condition of being legally liable" (1790). It migrated to the general vocabulary at the beginning of the 19th century. It occurs in several branches of law (criminal law, contracts, etc.) and the plural form *liabilities* ("debts") is present in the language of economics.

Synonymy, as an expression of the analogy relations (Stoichițoiu-Ichim, 2006: 131), involves two or more terms covering the same notion (Pitar, 2018: 75). Within the law of tort, we have selected the following synonymic series: (1) *damage* and *injury,* sharing the semes [+harm] and [+loss]; and (2) *compensation, redress, relief, remedy, damages*, which share the seme [+ reparation].

(1) Around 1300, the term **damage** had the meaning "injury, loss to person or property", from Old French *damage, domage* "loss caused by injury", from Latin *damnum* "loss, hurt" (OED).

In general, in an action for negligence the claimant must prove the existence of a duty on the part of the defendant, the breach of that duty and the damage suffered by the former. *Damage* includes "physical injury, mental suffering, damage to property, etc., but, subject to exceptions, a purely economic loss – such loss of profit – is not recoverable unless it results from some physical damage caused by the negligence" (Shears & Stephenson, 1996: 323).

In late 14th century, **injury** meant "harm, damage, loss", from Anglo-French *injurie* "wrongful action", from Latin *iniuria* "wrong, insult, damage".

These terms underwent a specialization of meaning.

(2) In late 14th century, **compensation** denoted the act of compensating, from Latin *compensationem* "a balancing". Around 1800, it was attested with its legal

meaning "amends for loss or damages" (OED).

Meaning "reparation, compensation for injustice", **redress** came from Anglo-French *redresce*, Old French *redrece*, *redresse*.

Relief first referred (late 14 century) to the "state of being relieved", as for hunger, sickness, from Anglo-French *relif*, from Old French *relief* "assistance" (OED). At present, it is also used in tort law with regard to compensation following the commission of a wrongful act. It means "legal remedy or redress".

As for **remedy**, around 1200, *remedie* was a cure for sin or evil, then it acquired a medical meaning, "a cure for a disease or disorder", from Anglo-French *remedie*, Old French *remede* "remedy, cure". The legal meaning "legal redress; means for obtaining justice in a court of law" developed in the 15th century (OED). It is therefore an interdisciplinary term.

The form **damages** referred to the repair of a loss, harm (c. 1400). This plural form still means "compensation".

Antonymy is a logical and linguistic relation between contrary meanings, helping to clarify the meanings of terms in opposition from a formal point of view (Stoichițoiu-Ichim, 2006: 133).

The terms **claimant** and **defendant**, purely technical terms, instantiate a relation of opposition, but also express a relation of disjunction (Pitar, 2018: 99) established between two concepts excluding each other, but being situated at a superior level: *claimant/defendant – parties to a lawsuit.*

The origin of the legal term **claimant** dates back to 1747, "one who demands anything as a right or title", from the verb *to claim* (c. 1300, "to call; to ask or demand by virtue of right or authority"), following the model of *appellant*, *defendant*, from the verbs *to appeal, to defend*.

Etymologically, **defendant** was used around 1400 with its legal meaning "a party sued in a court of law", from Anglo-French, Old French *defendant* (OED).

In a relation of **hypernymy**, the superordinate concept includes all subordinate concepts into a more general category (Pitar, 2018: 100).

The wrong called **defamation** is currently divided into libel and slander, whose hyperonym it is. The meaning "disrepute" of **defamation** is characteristic of the 1300s, from French *diffamacion* and directly from Medieval Latin *defamation*. The sense is no longer in use. In the 14th century, it referred to the damaging of another's reputation in the eyes of the members of a community, with no justification and, at the beginning of the 15th century, it came to be identified with slander or calumny.

Around 1300 **libel** denoted a "formal written statement" from Old French *libelle* "small book; (legal) charge", from Latin *libellus* "a little book, pamphlet; complaint", and at the beginning of the 17th century it was attested with the meaning "false or defamatory statement" (OED), acquiring specificity a bit later by referring to written or published statements.

What distinguishes libel from slander, which are both characterized by the seme [+defamatory statement], is permanence, marking the former. A libel is defamation in a permanent form, usually writing or printing.

Libel is a crime and a tort.

Slander was found in the form of *sclaundre*, "state of impaired reputation", from Anglo-French *esclaundre*, Old French *esclandre* "scandalous statement" (OED), therefore implying the fact that it was an oral statement.

Slander is a defamatory statement in a transient, oral form. With some

exceptions, slander is a tort, not an offence.

Wrong, with its synonym *wrongful act,* is the hyperonym of tort and crime.

In late Old English, it referred to something “improper or unjust”, from the adjective *wrong* (“twisted, crooked”) from Old Norse *rangr* (OED).

3. Conclusion

In this article, we have tried to analyse several tort law terms from a linguistic and conceptual perspective. The architecture of the conceptual system of torts allows a coherent organisation of the concepts connected, from a terminological standpoint, through semantic relations that we have captured in point of synonymy, antonymy, polysemy and hyponymy/ hypernymy. The etymology of these terms turned out to be of paramount importance in the analysis since it accounts, to a great extent, for their evolution, the process of specialization of meaning, intra or extradomanial polysemy, even determinologisation (migration to the common vocabulary). The etymology demonstrates the prevalence of Romance-origin terms (especially French and Latin) in the legal vocabulary of the English language.

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****Merriam-Webster Dictionary,* https://www.merriam-webster.com/dictionary

****Online Etymological Dictionary,* https://www.etymonline.com/

Abbreviations

Law, Jonathan (editor) (2022). Oxford Dictionary of Law, 10th edition, Oxford: Oxford University Press = ODL

Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary = MWD

Online Etymological Dictionary, https://www.etymonline.com/ = OED

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