

GENERIC STRUCTURE POTENTIAL ANALYSIS OF VIETNAMESE PRECEDENTS

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Abstract: Genre is the linguistic level that is of interest to many researchers as evident in a large number of research papers related to genre analysis. In linguistics, genre analysis also has several directions of research with distinct techniques. In this paper, the theory of Generic Structure Potential, which was developed by Hasan Ruquaiya (1989), was used to investigate the macrostructure of legal discourse. The legal discourse chosen to examine was Vietnamese precedents. The method used in this article was the descriptive method through content analysis from the qualitative approach. The result of this study showed the macrostructure of Vietnamese precedents from the perspective of Generic Structure Potential. The article contributed to the picture of genre analysis with a variety of legal discourses. The description of the macrostructure helps to characterize the cultural context of Vietnamese precedent discourses that is considered as a stratum of discourse analysis from the perspective of Systemic Functional Linguistics.

Keywords: macrostructure, Vietnamese precedent, generic structure potential, genre analysis

1. Introduction

Linguistics is an abstract and complex field of study with diverse theories. Among those theories, Systemic Functional Linguistics (henceforth, SFL) is a theory in which many scholars are interested at this present time. In Vietnam, over the past 10 years, there have also been studies on SFL. Many researchers around the world and in Vietnam acknowledge that SFL plays a useful role in the analysis of different languages, not just English. Among the theories developed based on Systemic Functional Grammar whose father is Halliday, Generic Structure Potential

(henceforth, GSP) formulated by Hasan (1989) is considered one of the effective theories in genre analysis of discourse. In Vietnam, some linguists have started to research and analyze some types of texts in Vietnamese from the perspective of GSP.

SFL is interested in “language in use” which operates in many fields of study. Law is an area where language plays an extremely important role. Using the wrong expressions in the legal field will entail unpredictable consequences. However, in Vietnam, the study of legal language on the SFL aspect still has many gaps in the research. One of the most prominent issues that attract lots of interest from jurists is

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“precedent”. Case law is not a new issue in the legal profession in countries where their legal system is common law. Even in countries with the civil-law legal system, it is not novel to mention “precedent”. However, in our respectful country, precedents have only been studied to apply since 2005 and the first precedents were officially announced in 2016.

1.1. Research Questions

With the desire to capture the trend in research, the study of Vietnamese precedents which are considered completely new legal discourses is embarked. The first step in studying these legal discourses is to approach their macrostructure. It is believed that SFL and GSP will frame a suitable method to start conducting genre analysis.

For the above reasons, the following key research questions are outlined to seek for the answers:

- (i) What are the features of Vietnamese precedents?
- (ii) What is the macrostructure of Vietnamese precedent in terms of GSP?

1.2. Previous Studies

As mentioned above, GSP has been widely studied and applied in genre analysis of a text. Around the world, there were a number of articles which used GSP to conduct genre analysis. With the “tale” genre, Hasan (1984), Ewata and Eds (2018) analyzed the macrostructure of that type of discourse in detail. News and magazine discourses have been studied by more scholars, namely Fatemeh Naderi (2012), Olaniyan (2014), Olagunju (2015), Sunday and Eds (2017), Putranto and Eds (2018), Kyaw and Eds (2019). In the field of advertising, studies on GSP could be mentioned such as Nurhayati and Eds (2017), Hayati (2018), and Nugroho (2019). Some other genres were also studied such as Ajayi (2019) on Christian Street evangelism

in Southwestern Nigeria, Adedamola and Eds (2020) with an article relating to banking discourses; Dalimunte and Eds (2020) with a paper researching English language textbooks of economics and Islamic economics in an Indonesian university from the perspective of GSP. However, legal discourses have not been examined, and consequently their macrostructure, especially that of precedents or judicial documents remains a non-charted territory in linguistic research.

In Vietnam, among the small number of studies on genre or genre analysis from the perspective of GSP, outstanding articles on applying GSP to analyze some genres of discourse must be mentioned, for instance, T. M. T. Nguyen (2018) with a study related to English introductory pages of institution websites in Vietnam; T. L. Nguyen (2018) with a paper mainly about GSP and writing business correspondence in English, Do (2018) with the research named “Practical applications of discourse study on language teaching”, or Kieu (2019) with research relating to English-Vietnamese blog language. Again, these studies demonstrate that genre investigation of Vietnamese precedents has not been carried out from the view of GSP. That means our genre analysis of Vietnamese precedent discourse will be meaningful and make helpful contributions to the use of SFL.

2. Theoretical Framework

2.1. Legal Discourse

(i) The Concept

Until now, the concept of legal discourse has generally been agreeable among linguists. In the research on the language of law, Finegan (2013) listed the types of texts that belong to the genre of legal discourse. According to that, it is the language used in written legal documents; the interpretation of legal documents in

judicial decisions; the language used in the courtroom; written contracts that create legal rights and obligations: leases, insurance policies, wills and disclaimers; interactions between public authorities and citizens: police interviews with crime suspects and stakeholders; regular emails and other checked correspondence relating to possible illegal communication; face-to-face and telephone conversations (e.g., secretly-recorded interactions between persons suspected of criminal conspiracy) (Finegan, 2013, pp. 482-483). It can be inferred that precedents can be classified as one of the categories of legal discourse in the shape of judicial decisions. Therefore, precedent discourses will contain certain characteristics of the legal discourse. That is why in the next section we will describe the basic features of the legal discourse that have been mentioned by previous studies.

(ii) The Feature of Legal Discourse

Legal English is widely known for its complexity from both perspectives: syntax and vocabulary. Gustafsson (1984) mentioned lexical complexity to difficulties in meaning understanding and called it conceptual complexity because the meaning of a word cannot be understood without legal knowledge despite the word's clear content (Gustafsson, 1984). The following are some of the main features of the legal discourse.

- Procedure and formality in the process of building legal discourse

Yon Maley (1987) analyzed Australian and British law in terms of features of the legislative language and its role in law-making. She examined the interplay of history, social functioning, participant roles, accepted legislative goals and the use of language to show that the language of law can be studied from the aspect of style or register (Halliday, 1989). Accordingly, an analysis of the style or the context of legal discourse reveals contradictions that coexist in legal

documents. The reason for this linguistic feature is that legal texts often include provisions on the legal rights and obligations of the entities involved. These regulations shall predict the possible behavior of citizens in the future. Therefore, the development of these legal norms must ensure flexibility as well as certainty and stability. The important role of legal documents is to develop legal norms on rights and obligations. That is the reason why modal verbs such as “shall, must, and may” play a very crucial part in creating binding for provisions in legal documents from the aspect of linguistics (Maley, 1994, p. 30).

- The ambiguity and complexity of legal discourse

Mellinkoff (1963) with the study on legal language described the characteristics of this language genre as “wordiness, lack of clarity, pomposity and dullness”. He also concluded that the use of archaic words and phrases from Old English, the Middle Ages, French and even Latin is the feature of this genre as well. In addition, the use of formal words and structures in both spoken and written language is normal in legal discourses. Moreover, the use of legal technical words and phrases that ensure accuracy but are embedded with vague intentions of the legislator makes the legal language difficult to understand and extremely complicated (Mellinkoff, 1963).

Bhatia (1983a, 2013) has also done a lot of research on legal language and its application in the teaching of English for specific purposes. Similarly, he examined the ambiguity and complexity as the featured characteristics of the legal texts (Bhatia, 1983b, 1987). Danet and Van Dijk (1985) concluded that the features of the legal discourse could be noticed as the following: the dense use of technical terms such as “real property”, “fee simple”; the use of common terms but with completely different

meanings in the legal context such as “assignment”, “beneficial”; the use of archaic expressions such as “hereinafter” “wheresoever”; the use of doublets such as “cease and desist”, “will and bequeath”; preference to use “shall” over “will”; the use of present emphatic, e.g. “do(es) hereby convey”; the use of irregular prepositional phrases and the high frequency of “any”.

- Lengthy sentence

The length of sentence is one of the prominent features mentioned in the studies of Gustafsson (1975). He considered that to be one of the main characteristics of the legal language. It was explained that the use of lengthy sentences was just a habit that followed the old traditional writing system in English. That kind of characteristic can be easily found not just as a trend, but as a tradition in English legal documents. Bhatia (1983a) or Gibbons (1994) also mentioned long-sentences as a characteristic of legal language when studying this genre of language.

- Complexity in grammar and sentence structure

The next feature in the legal language is the rather complicated grammar and sentence structure. This feature is emphasized in the study of Tiersma (1999). Similarly, Quirk et al. (1972) mentioned the characteristic of legal language with complex prepositional phrases such as “in respect of”, “in accordance with”, etc. These phrases tend to appear more frequently in legal English than in other English genres (Quirk, 2010). The complexity of the sentence structure shown in Bhatia's studies is that in most cases the subordinate clauses appear to the left of the main clause, the subordinate clauses are adverbial clauses that usually begin with “if”, “where” or

“when”. Bhatia (2014) argued that placing adverbial clauses at the beginning of a sentence is reasonable, therefore it has become popular. It was the intention of the editors to put adverbial clauses first to let the listeners/speakers focus more on these and then to reduce their attention to other parts of the sentence intentionally (“delaying the introduction of the legal subject”) (Bhatia, 2014, p. 110).

Complex grammar and sentence structure are also reflected in the use of embedded clauses in legal language. According to Quirk (2010), the use of embedded clauses complicates sentence grammar and creates the sentence length. Gibbons (1994) clarified that the embedded clauses taken together would give rise to the length and complexity of the sentence structure. This is one of the features of the legal language. If a subordinate clause is wrapped in another, it causes unnecessary complexity and creates a disruption in the flow of the sentence. In addition, in the aspect of syntax, legal discourse is also characterized by nominalizations, domination of passive sentences, omission of relative pronouns, frequent use of complex conditions, a high percentage of prepositional phrases, unusual length, complexity of multiple envelopes and frequency of negations.

- Adverbial clause

Another outstanding feature of the legal language is the dense appearance of adverbial clauses and their position. In traditional English grammar, the occurrence of adverbial phrases can be seen in every possible position in the sentence. They can be placed before the subject, after the subject, between the subject and the verb, between the auxiliary and the main verb, after the main verb and after conjunctions

(Nguyen et al., 2012). However, in legal discourse, Mellinkoff (1963) showed that most cases were found of adverb insertion between auxiliary and main verbs. This placement of adverbial phrases can make legal English more special. In addition, Mellinkoff believed that besides the dense occurrence frequency, the position of adverb phrases was a remarkable feature of legal discourse. It is put in unusual places in sentences where adverbs are not normally placed. They are inserted between the auxiliary and the main verb, or in some places immediately after conjunctions (Mellinkoff, 1963).

In summary, the most basic features of the legal language are long sentences, complex grammar and sentence structure, dense occurrence and irregular positions of adverbial clauses. It is these basic characteristics that make the legal language complicated, difficult to understand, and difficult to access for those who do not have expertise in this field.

2.2. Generic Structure Potential

Genre analysis is of interest to many scholars from different perspectives. There are three main directions of genre analysis of text/ discourse: Systemic Functional Linguistics (highlighted GSP by Hasan), English for Specific Purposes (Swales with well-known papers) and Genre as Social Interaction (Sade Olagunju, 2019, p. 63). On the line of this research trend, Rhetoric Genre Study (Freedman & Artemeva, 2006; Freedman & Medway, 2003) is also becoming an applicable direction to investigate genre theory and the diverse genre in language use. In this paper, the analytical framework of GSP will be applied to conduct the analysis of the genre of Vietnamese precedents.

Structure of a text refers to the overall structure, the global structure of the message form (Hasan, 1989, p. 53). On the basis of Register Theory developed by Halliday, Hasan introduced a new concept called Contextual Configuration. Accordingly, Contextual Configuration— a specific set of values that realizes the field, tenor and mode, “permits statements about the texts structures” to be made (Halliday & Hasan, 1985, p. 56). Contextual Configuration can help analysts predict the structure of a text through the features of it. The features of Contextual Configuration include: (1) what elements must occur? (2) what elements can occur? (3) where must they occur? (4) where can they occur? (5) how often can they occur? As understood from Hasan’s analysis of contextual configuration, “element” can be seen as a sentence/ utterance or a group of sentences/ utterances that functions in language use (Halliday & Hasan, 1989, p. 59, 61). In addition, T. M. T. Nguyen (2018) considered the multimodal part (e.g., images) as an element of GSP. Therefore, in the light of SFL, a Contextual Configuration can predict the following about text structure:

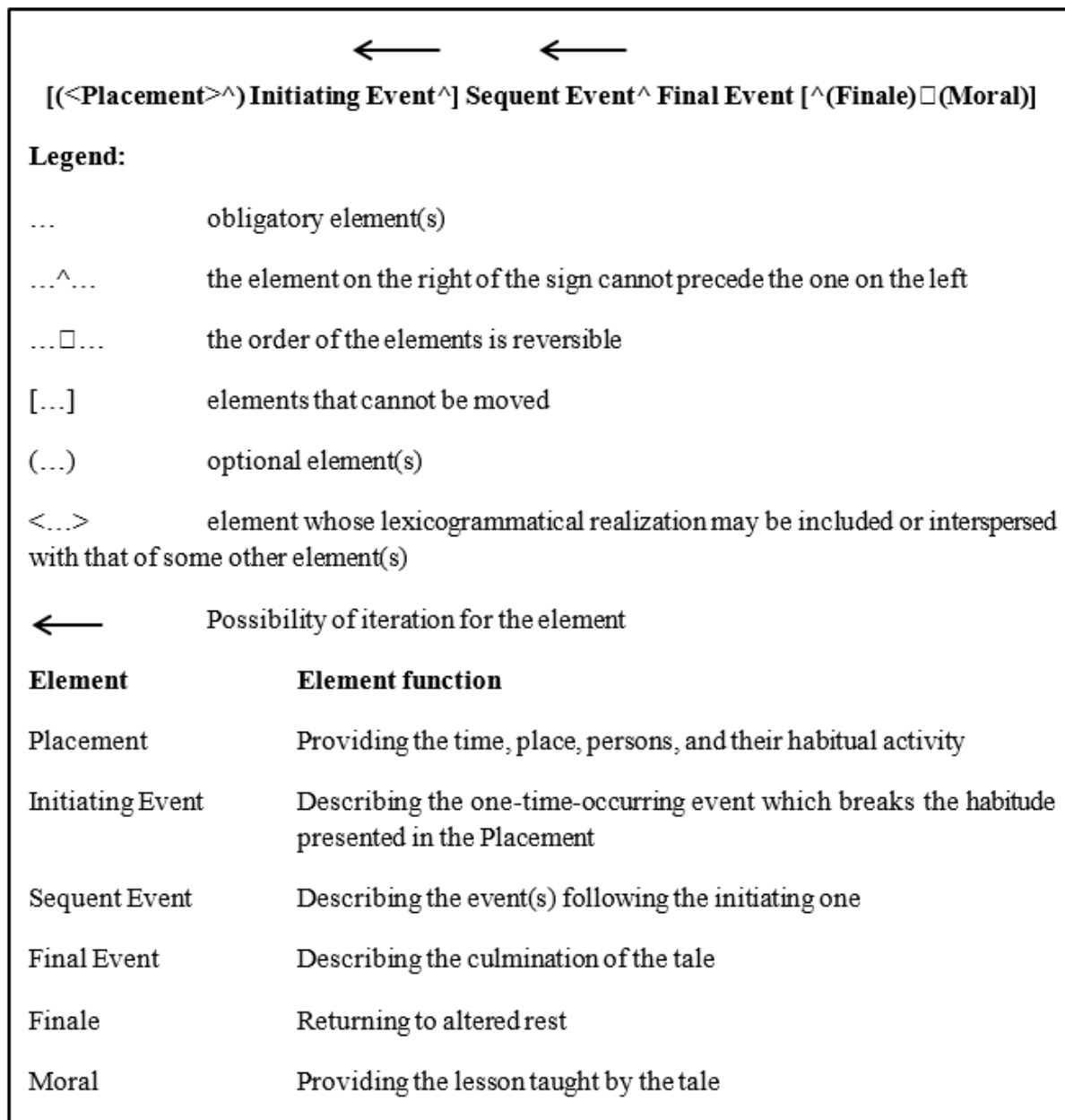
- (i) Obligatory elements
- (ii) Optional elements
- (iii) Sequencing of elements
- (iv) Iteration

Investigating some classic English fairy tales, Hasan (1984) proposed the following Generic Structural Potential of fairy tales as shown in the following Figure 1.

Accordingly, the GSP model for fairy tales includes six elements, namely Placement, Initiating Event, Sequent Event, Final Event, Finale and Moral. In the scope of this research, our data is Vietnamese precedents.

Figure 1

GSP Model for Fairy Tales (Hasan, 1984, p. 54) (Redrawn From Ewata, Oyebade & Onwu, 2018, p. 77)



3. Corpus Description

3.1. An Overview of Vietnamese Precedents

First of all, the concept of precedent

needs to be understood uniformly. The concept of precedent is different in many countries. However, in Vietnam, “precedent is the findings and decisions in the valid Judgment or Decision¹ of the Court on a

¹ Judgment and Decision are two types of a competent Court’s official documents where the hearings of

court are written.

specific case selected by the Council of Judges of the Supreme People's Court and announced by the Chief Justice of the Supreme People's Court as a precedent for the courts to study and apply in trial" (Article 1, Resolution 04/2019/NQ-HDTP of the Council of Judges of the Supreme People's Court).

A Court Judgment becomes precedent when it is made according to a four-step process: suggestion; comment; approval; announcement. Individuals, agencies and organizations may submit suggestions for Judgments of the Court in legal effect to be approved as precedent. According to Article 7, Resolution 04/2019/NQ-HDTP of the Council of Judges of the Supreme People's Court, precedent must include the following main contents:

- (i) Number and name of precedent
- (ii) Precedent source: number, name and judgment of the Court chosen to be a precedent
- (iii) Introduction of the content of Judgment and the Court's findings
- (iv) Legal basis related to the case
- (v) Keyword related to this precedent
- (vi) Content of the case and previous Court's findings
- (vii) Quoting part of Judgment and the Court's findings to be chosen a case law (source of law)

3.2. Research Corpus

Vietnamese precedents selected as research data were 43 texts in total. They are all the discourses which were selected and

approved by the Council of Judges of the Supreme People's Court in the period from 2015 to February 2021. There were 316 pages in the research corpus of Vietnamese precedents. This data was helpful to describe the macrostructure of that type of legal discourse. From the aspect of ethics in research, many full proper names given in the following examples were presented in the same way as in the Vietnamese precedents announced by the Viet Nam Supreme People's Court. Because these names were officially open in Viet Nam, the usage of those names was acceptable from the ethical perspective.

4. Findings and Discussion

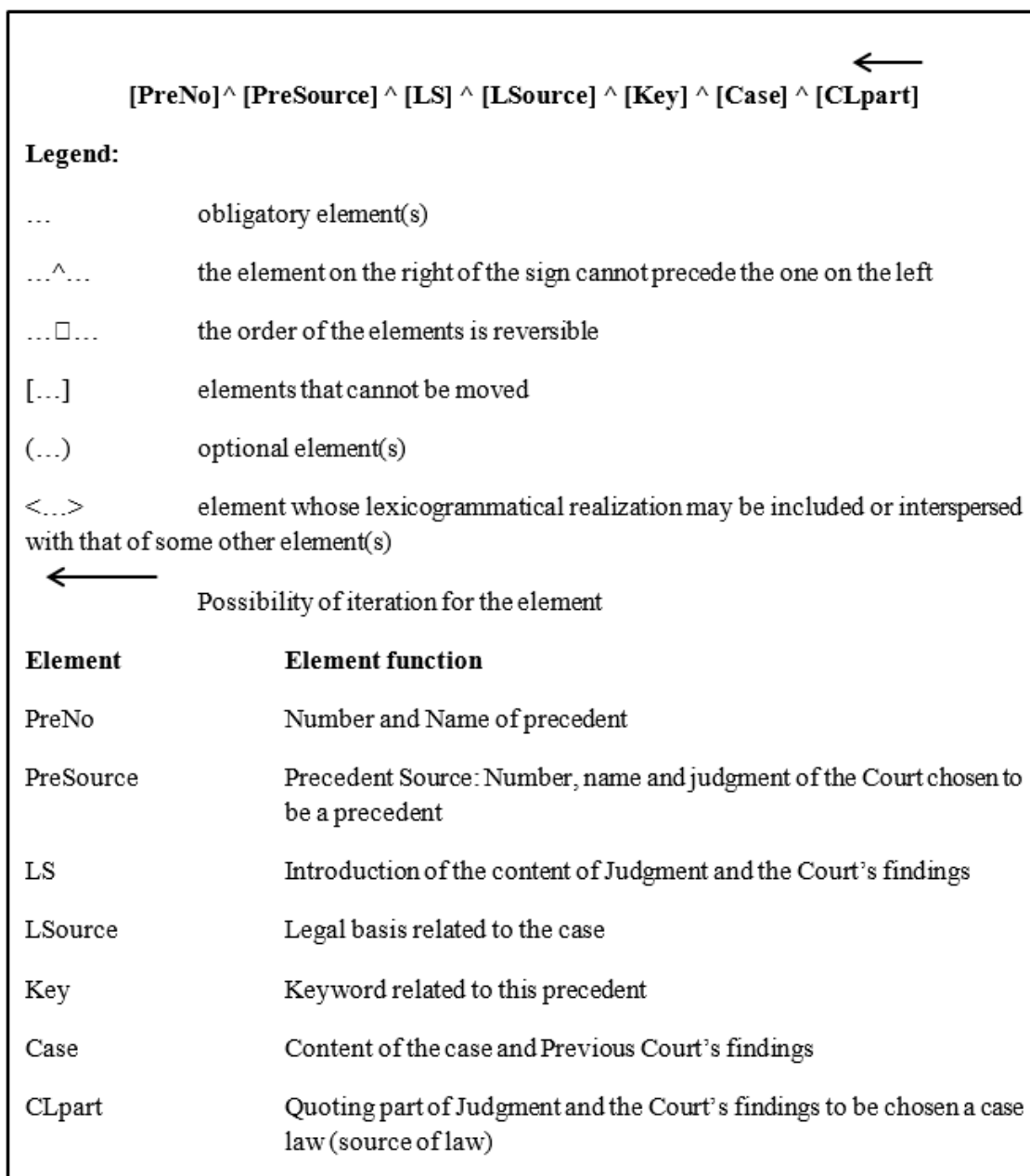
Based on five questions drawn by GSP for genre analysis of a text, we conducted a survey of 43 Vietnamese precedents with four concentrations: (i) obligatory elements; (ii) optional elements; (iii) sequencing of elements; (iv) iteration. By determining these elements, the GSP of Vietnamese precedents must be defined (T. M. T. Nguyen, 2018, p. 74).

4.1. Obligatory Elements

As presented in the above, the basic contents of Vietnamese precedents must consist of seven parts in the announcement of the Chief Justice of the Supreme People's Court. That is to say the published precedents must have seven mandatory elements. The survey results have once again confirmed these elements. The survey results are illustrated in Figure 2 below.

Figure 2

GSP Model for Vietnamese Precedents



Among these obligatory elements, the last element CLpart (Quoting part of Judgment and the Court's findings to be chosen a case law - source of law) is the repeated element. This is essentially a piece of text, which serves as an obligatory element. However, the content of this section is taken verbatim from the CC

section (Case content). For that reason, CLpart must be treated as the recurred element. This repeating element is an obligatory element which always appears in Vietnamese precedents. The figure below is used for the illustration of seven elements in a Vietnamese precedent (Precedent No. 04/2016/AL).

Figure 3

Extraction of Precedent No. 04/2016/AL

Án lệ số 04/2016/AL	PreNo
Được Hội đồng Thẩm phán Tòa án nhân dân tối cao thông qua ngày 06 tháng 4 năm 2016 và được công bố theo Quyết định số 220/QĐ-CA ngày 06 tháng 4 năm 2016 của Chánh án Tòa án nhân dân tối cao.	PreSource
Nguồn án lệ: Quyết định giám đốc thẩm số 04/2010/QĐ-HĐTP ngày 03-3-2010 của Hội đồng Thẩm phán Tòa án nhân dân tối cao về vụ án “Tranh chấp hợp đồng chuyển nhượng quyền sử dụng đất” tại thành phố Hà Nội giữa nguyên đơn là bà Kiều Thị Tý, ông Chu Văn Tiên với bị đơn là ông Lê Văn Ngự; người có quyền lợi, nghĩa vụ liên quan là bà Lê Thị Quý, bà Trần Thị Phấn, anh Lê Văn Tâm, chị Lê Thị Tường, anh Lê Đức Lợi, chị Lê Thị Đường, anh Lê Mạnh Hải, chị Lê Thị Nhâm.	LS
Khái quát nội dung của án lệ: Trường hợp nhà đất là tài sản chung của vợ chồng mà chỉ có một người đứng tên ký hợp đồng chuyển nhượng nhà đất cho người khác, người còn lại không ký tên trong hợp đồng; nếu có đủ căn cứ xác định bên chuyển nhượng đã nhận đủ số tiền theo thỏa thuận, người không ký tên trong hợp đồng biết và cùng sử dụng tiền chuyển nhượng nhà đất; bên nhận chuyển nhượng nhà đất đã nhận và quản lý, sử dụng nhà đất đó công khai; người không ký tên trong hợp đồng biết mà không có ý kiến phản đối gì thì phải xác định là người đó đồng ý với việc chuyển nhượng nhà đất.	LS
Quy định của pháp luật liên quan đến án lệ: - Khoản 2 Điều 176 của Bộ luật Dân sự năm 1995; - Điều 15 của Luật Hôn nhân và gia đình năm 1986.	LSource
Từ khóa của án lệ: “Tranh chấp hợp đồng chuyển nhượng quyền sử dụng đất”; “Định đoạt tài sản chung của vợ chồng”; “Xác lập quyền sở hữu theo thỏa thuận”.	Key
NỘI DUNG VỤ ÁN Tại đơn khởi kiện đề ngày 05-11-2007 và quá trình giải quyết vụ án, nguyên đơn là bà Kiều Thị Tý trình bày: [..] Căn cứ vào đơn khởi kiện đề ngày 05-11-2007 và các lời khai của bà Tý, ông Tiên trong quá trình giải quyết vụ án thì bà Tý, ông Tiên yêu cầu ông Ngự, bà Phấn trả lại toàn bộ nhà, đất mà	Case
NỘI DUNG ÁN LỆ “Về hợp đồng mua bán nhà, đất ngày 26-4-1996: Việc chuyển nhượng nhà, đất diễn ra từ năm 1996, sau khi mua nhà, đất, ông Tiên, bà Tý đã trả đủ tiền, nhận nhà đất, tôn nền đất, sửa lại nhà và cho các cháu đến ở. Trong khi đó gia đình ông Ngự, bà Phấn vẫn ở trên diện tích đất còn lại, liền kề với nhà ông Tiên, bà Tý. [...] là không có căn cứ.”	CLPart

4.2. Structure of Case Content

Case content is an obligatory element appearing in the macrostructure of Vietnamese precedents. This obligatory element accounts for a very large volume of

precedents, usually from 1/2 to 2/3 of the content. Therefore, it would be a mistake not to conduct a GSP of CC analysis.

The results showed that CC may contain seven components as in Figure 4. The

results of the survey on the occurrence of these elements are presented in Table 2 below.

Table 2
The Distribution of Elements in the Vietnamese Precedents

Precedent number/element	CC	CFI1	CA1	CFI2	CA2	CR	CF	CL	CD
01; 07	X	X	X	X	X	X	X	X	X
02; 03; 04; 05; 19; 21; 08; 10; 25; 13; 14; 15; 16; 33	X	X	X			X	X	X	X
06; 09; 24	X	X	X	Xa	Xa	X	X	X	X
11; 12; 17; 20; 29; 31; 32; 26; 17; 43	X	X	X			X	X	Xb	X
18; 22; 30; 41	X	X	X				X	X	X
23	X	X	X				X	Xb	X
28	X	X	X	X		X	X	Xb	X
34; 36; 37; 38; 40	X	X	X			X	X	Xb	X
35; 39	X	X	X	X	X	X	X	Xb	X
42	X	X					X	Xb	X

Note: X: appeared in the Vietnamese precedents
 Xa: CFI and CA recurred 3 times
 Xb: CL is placed in to the beginning of CD
 From Table 2, it can be seen that the obligatory elements include: CC, CFI, CF, CL, CD. Optional elements include: CA, CR. And, CFI, CA and CR are recursive elements. The GSP of CC part is illustrated in Figure 4 below.

Figure 4
GSP Model for the “Case” Part of Vietnamese Precedents

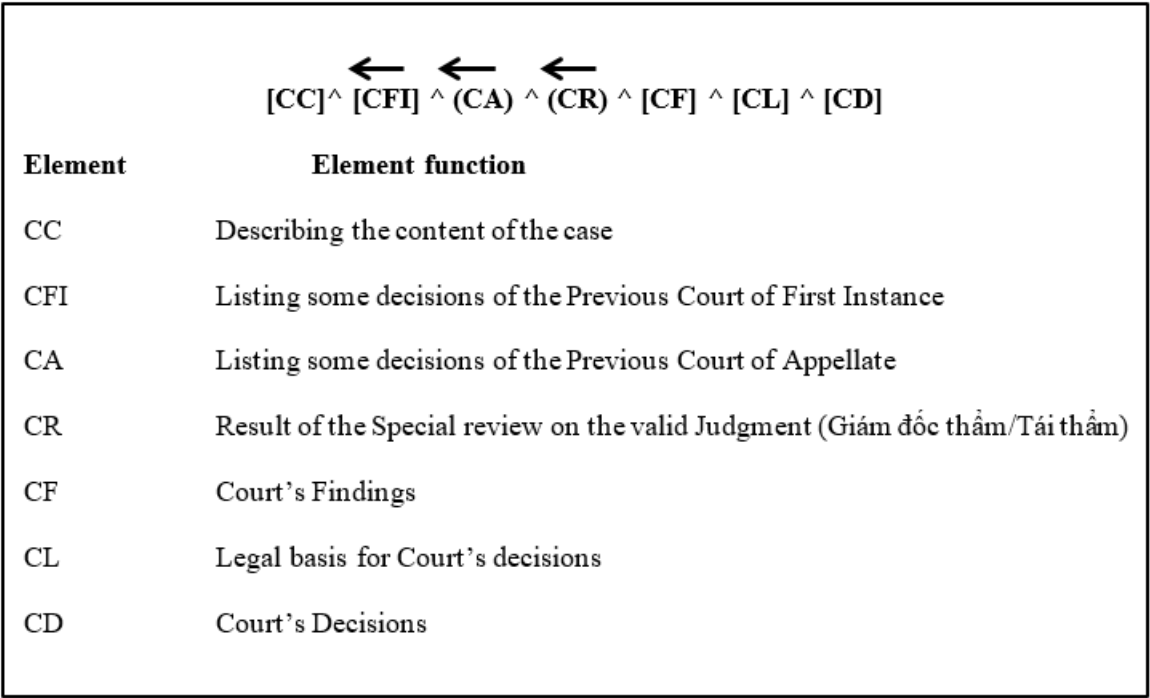


Figure 5

Extraction of Case Content in Precedent No. 04/2016/AL

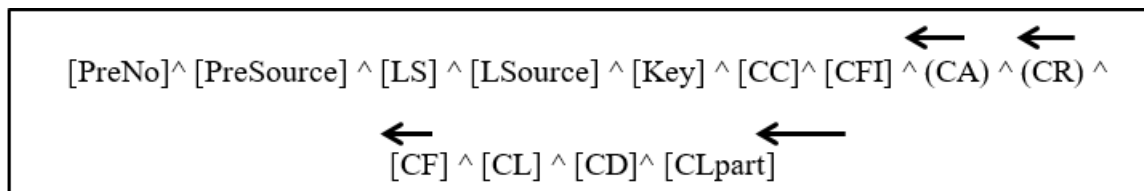
NỘI DUNG VỤ ÁN	Case
<p>Theo đơn khởi kiện đề ngày 07-7-2007, đơn đề nghị thay đổi yêu cầu khởi kiện ngày 10-10-2007, các tài liệu có trong hồ sơ vụ án và trình bày của đại diện nguyên đơn thì:</p>	
<p>Ngày 03-10-2006, Công ty cổ phần thép Việt Ý (sau đây gọi tắt là Công ty thép Việt Ý) ký Hợp đồng kinh tế số 03/2006-HĐKT với Công ty cổ phần kim khí Hưng Yên (sau đây gọi tắt là Công ty kim khí Hưng Yên);</p>	CC
<p>[...]</p>	
<p>Tại Bản án kinh doanh, thương mại sơ thẩm số 01/2007/KDTM-ST ngày 14-11-2007, Tòa án nhân dân tỉnh Bắc Ninh đã quyết định: “Buộc Công ty cổ phần kim khí Hưng Yên phải trả cho Công ty cổ phần thép Việt Ý tổng số tiền của 04 hợp đồng số 03 ngày 03-10-2006; [...]</p>	CFI
<p>Tại Bản án kinh doanh, thương mại phúc thẩm số 120/2008/KDTM-PT ngày 18-6-2008, Tòa phúc thẩm Tòa án nhân dân tối cao tại Hà Nội đã quyết định: “Hủy Bản án kinh doanh, thương mại sơ thẩm số 01/2007/KDTM-ST ngày 14-11-2007 của Tòa án nhân dân tỉnh Bắc Ninh.</p>	CA
<p>Tại Bản án kinh doanh, thương mại sơ thẩm số 09/2008/KDTM-ST ngày 23-10-2008, Tòa án nhân dân tỉnh Bắc Ninh đã quyết định: [...]</p>	CFI2
<p>Tại Bản án kinh doanh, thương mại phúc thẩm số 32/2009/KDTM-PT ngày 19-02-2009, Tòa phúc thẩm Tòa án nhân dân tối cao tại Hà Nội đã quyết định: [...]</p>	CA2
<p>Tại Bản án kinh doanh, thương mại sơ thẩm số 18/2009/KDTM-ST ngày 03-9-2009, Tòa án nhân dân tỉnh Bắc Ninh đã quyết định: “1. Buộc Công ty cổ phần kim khí Hưng Yên phải có trách nhiệm thanh toán trả Công ty cổ phần thép Việt Ý số tiền của 04 hợp đồng kinh tế: Hợp đồng số 03/2006 ngày 03-10-2006; Hợp đồng số 05/2006 ngày 20-12-2006;</p>	CFI3
<p>Tại Bản án kinh doanh, thương mại phúc thẩm số 63/KDTM-PT ngày 05-4-2010, Tòa phúc thẩm Tòa án nhân dân tối cao tại Hà Nội đã quyết định: “Hủy Bản án kinh doanh, thương mại sơ thẩm số 18/2009/KDTM-ST ngày 03-9-2009 của Tòa án nhân dân tỉnh Bắc Ninh.</p>	CA3
<p>Tại phiên tòa giám đốc thẩm, đại diện Viện kiểm sát nhân dân tối cao nhất trí với kháng nghị của Chánh án Tòa án nhân dân tối cao.</p>	CR
<p>Hội đồng Thẩm phán Tòa án nhân dân tối cao nhận định:</p>	
<p>1. Từ tháng 10/2006 đến tháng 02/2007, Công ty thép Việt Ý và Công ty kim khí Hưng Yên đã ký với nhau 4 hợp đồng kinh tế</p>	CF
<p style="text-align: center;">QUYẾT ĐỊNH:</p>	
<p>Hủy Bản án kinh doanh, thương mại phúc thẩm số 63/KDTM-PT ngày 05-4-2010 của Tòa phúc thẩm Tòa án nhân dân tối cao tại Hà Nội và Bản án kinh doanh, thương mại sơ thẩm số 18/2009/KDTM-ST ngày 03-9-2009 của Tòa án nhân dân tỉnh Bắc Ninh;</p>	CD

4.3. Macrostructure of Vietnamese Precedents from GSP Perspective

Thus, by investigating 43

Figure 6

GSP of Vietnamese Precedents



In the total of examined Vietnamese precedents, the obligatory elements based on the request of the competent authority all appeared. Complying with the prescribed contents is an obligation of the precedent-writing agency. This is a feature of legal discourses which must comply with a certain format of the competent authority. This will also be similar to other administrative and legal documents.

The content of the main part of the case law is CC. This section is composed of seven elements. Of which there are 5 obligatory elements, 2 optional elements and 3 recursive elements. Two optional elements CA, CR depend on how many times the case in that precedent is heard. If the case is heard at first instance and appellate once, the CA appears once and the CR must not appear. Similar inferences can be accepted. And elements that can recur are affected in the same way. If the precedent related to the case is heard many times, the iteration of CFI, CA, CR will be the same. This is understandable, since the CC part of the precedent must state the decisions of the previous courts. Therefore, CFI, CA and CR will recur in precedents.

Different types of the discourses will inevitably have their own macrostructure. Le, King-kui and Ying-Long (2008) and many other linguists have drawn the macrostructure of the diverse genre from the view of GSP and those results proved the difference in the structure of the discourses.

Vietnamese precedents, it can be summarized that the GSP of Vietnamese precedents is as follows.

T. M. T. Nguyen and H. H. Ngo (2017) investigated the macrostructure of abstracts of English and Vietnamese scientific articles and achieved the results with eleven elements of English research papers and ten elements of Vietnamese research papers. Meanwhile, Usman, Rizkiand Samad (2019) explored the macrostructure of political advertising posters for election activities in Aceh, Indonesia to show the distinctions in its constituent elements (p. 132). In that paper, the authors researched the genre analysis from the two different views of scholars Bhatia and Barron. The article showed that there were nine factors (moves) if applying Bhatia's model and seven factors if applying Barron's model.

5. Conclusion

Analyzing the genre of a text is not only theoretically meaningful, it also makes practical sense. Similarly, the genre analysis of Vietnamese precedents can be applied in summarizing precedents, or guiding research for Vietnamese law researchers. Through the investigation, the macrostructure of Vietnamese precedents can be represented by the following diagram: [PreNo] ^ [PreSource] ^ [LS] ^ [LSource] ^ [Key] ^ [CC] ^ [CFI] ^ (CA) ^ (CR) ^ [CF] ^ [CL] ^ [CD] ^ [CLpart]. GSP theory is a useful method in analyzing text genres. It is hoped that this paper will contribute to the analysis of a new genre of language - legal discourse named

“precedent”. Through the GSP analysis of Vietnamese precedents, these kinds of legal discourse research will be relevant sources for legal experts and linguistic scholars to seek for a new model or improve Vietnamese precedents in the near future. In addition, it is expected that there should be much more ESP investigations of other professional genres.

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TIỀM NĂNG CẤU TRÚC THỂ LOẠI CỦA ÁN LỆ TIẾNG VIỆT

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Tóm tắt: Thể loại là cấp độ phân tích được nhiều nhà nghiên cứu quan tâm và có đa dạng các công trình nghiên cứu. Trên bình diện ngôn ngữ học, phân tích thể loại cũng có vài đường hướng nghiên cứu với những thủ pháp riêng biệt. Trong bài viết này, lý thuyết Tiềm năng cấu trúc thể loại (Generic Structure Potential) của Hasan Ruquaiya (1989) được sử dụng để tiến hành khảo sát cấu trúc vĩ mô của diễn ngôn pháp lý. Diễn ngôn được chọn để khảo sát là án lệ tiếng Việt. Phương pháp được sử dụng trong bài viết này là phương pháp miêu tả ngôn ngữ học. Kết quả của nghiên cứu này là xác lập được Tiềm năng cấu trúc thể loại của án lệ tiếng Việt. Bài viết góp phần vào thực tiễn phân tích các thể loại diễn ngôn pháp lý từ góc nhìn của Lý thuyết Tiềm năng cấu trúc thể loại. Việc mô tả cấu trúc vĩ mô giúp xác lập đặc điểm của Chu cảnh văn hoá của diễn ngôn án lệ tiếng Việt, một tầng bậc của việc phân tích diễn ngôn từ góc nhìn của Ngôn ngữ học chức năng hệ thống.

Từ khoá: cấu trúc vĩ mô, án lệ tiếng Việt, tiềm năng cấu trúc thể loại, phân tích thể loại