

The Impact of Legal English Idiosyncratic Syntax on Law Readers: Between Psycholinguistic Dilemmas and Preciseness

A Theoretical Study on EFL Setting

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Abstract: The theoretical linguists' descriptions reveal that legal English comprises a load of syntactic idiosyncrasies that are not found in any other variety of English. Those syntactic discontinuities are mainly caused by an unusual nesting of clauses without giving considerations to law readers. This might cause psycholinguistic problems to EFL law readers even though it intends to make the legal document clearer. Notwithstanding, according to some discourse analysts, those syntactic complexities are only adopted for the sake of promoting preciseness and avoiding vagueness in English legal discourse. The purpose of this study is to contrast the two views hereinabove mentioned taking into consideration the new tendency of plain English movement. The research discusses how this ebb and flow can have an impact on legal understanding and how it makes way to poor application of conventions, especially in international contexts. Law constitutes a basic element of human and social life, and English is the language of international practice. It is recommended through this paper that legal drafters need to strike a balance between adverbial insertions and the considerations to precision and clarity to ensure better law understanding, thereby improve social reality, especially in the era of globalization.

Keywords: Legal English, Syntactic Idiosyncrasies, Psycholinguistic Dilemmas, EFL, ESP

Introduction

The nature of legal English, as any legal language in the world, tends to be dry, frozen and incomprehensible. One may wonder why many, if not all, idiosyncratic linguistic features are unique to the said variety. One may even ask how this particular discourse deviates from the mainstream of the general use of language. Cornu views that since general linguistics, with its various branches, does not have a clear-cut definition, then it is the mission of the jurist (legal professional) to choose from it what concepts might fit the legal language framework (2000, 33). In this regard, he insists that the choice might start from phonology for stylistic and artistic reasons in oratory legal discourse, morphology in prefixes and suffixes phenomena to semantics. Conceived of this way, other levels of language, such as syntax and discourse, can also be thought of.

This research identifies how legal English drafters follow an unusual method of clauses order within one sentence and use other syntactic features such as one-word nominalization as an alternative to a whole clause. This undoubtedly has made English a legal language armed with a set of idiosyncratic syntactic features that bring about interruptions in the reading process. The syntactic discontinuities are mainly caused by an abnormal nesting of clauses without giving considerations to law readers; thereby this might, though it can be considered within the

intentions of making the legal document clearer, lead to psycholinguistic problems to EFL law readers, and English native speakers are not immune. This ebb and flow, so to speak, can have a negative impact on legal understanding as the latter constitutes a basic element of human and social life, especially in the era of globalization. To this end comes the plain English movement to settle this language-related dilemma and consider the mechanisms to decipher the complexities mentioned hereinabove.

In this study, the first section describes the different syntactic characteristics of the English legal language using some legal excerpts taken from different legal documents. Then, some insights on the opposing views will be offered, whether the fact that complexities cause psycholinguistic dilemmas or constitute a necessity for preciseness. The last part sheds light on the plain English campaign and how it can realize some balance between the two contrasting arguments. The present paper aims at providing a theoretical underpinning and a descriptive analytical framework to account for the points discussed above. It is recommended through this research that legal drafters need to make a trade-off between complicated adverbial incorporations and the needed clarity to ensure law understanding, thereby improve social reality especially in the time of globalization.

I. Literature Review

A. Syntactic Characteristics

The syntactic characteristics of legal English received considerable attention. In fact, their analysis would offer us enormous information concerning the ambiguous style of the English language within the context of law. In this line of thought, a number of studies reported in the body of literature provide detailed data on the different features at the level of sentence structure.

1. *Qualifying and Periodic Sentences*

Hovelsø (2004) thinks that law carries within its structure an array of complex sentences as its main aim is to qualify the actor's action via a set of circumstances. This results in the creation of periodic sentences having their main clause at the end of a sentence. Bhatia (1993, 200) claims that such initial case descriptions would generally be subordinated with a number of adverbs such as *if*, *where*, and sometimes *when*.

The reader can consider this excerpt that is extracted from the Construction Industry Long Service Leave (Amendment) Act 1985 (Victoria, Australia), retrieved from (Alder, 1990, as cited in Carlo, 2015, 41)

- 1) Excerpt 1: If the liquidator or trustee does not comply with any provision of this section (or fails as trustee duly to pay the long service leave charges for which the liquidator or trustee is liable under sub-section (3) the liquidator or trustee must to the extent of the value of the assets which have been taken into the liquidator's or trustee's possession and which are or have been available at any time for the payment of the long service leave charges be personally liable to pay the long service leave charges.¹

What can be noticed from the excerpt above is that the sentence is overlong because of the nesting of such hypotactic structures, one reason for the high formality and complexity of legal discourse (Carlo, 2015, 40).

2. Irregular Placement of Adverbial Clauses and Long Sentences

Another idiosyncratic feature in legal English is the irregular insertion of adverbials. Hovelsø (2004) reveals that it is not common to encounter an adverbial clause placed between a verb and its object, but this is what we find in legal English, such as in the following example:

- 2) Excerpt 2: The Mortgagor shall pay to the Bank all and every the sum and sums of money which now are or shall at any time be owing to the Bank by the Mortgagor. (Mortgagor Deed, in Hovelsø 2004)

Moreover, adverbial clauses can be nested between auxiliary and main verbs and cause an interruption at the level of the verb phrase (Crystal and Davy; Hovelsø; Carlo). The second example above and the next one would illustrate this point.

- 3) Excerpt 3: Where the dwelling-house with respect to which the right to buy is exercised is a registered land, the Chief Land Registrar shall, if so requested by the Secretary of State, supply him (on payment of the appropriate fee) with an office copy of any document required by the Secretary of State for the purpose of executing a vesting order with respect to the dwelling house and shall (notwithstanding section 112 of the Land Registration Act 1925) allow any person authorized by the Secretary of State to inspect and make copies of and extracts from any register or document which is in the custody of the Chief Land Registrar and relates to the dwelling-house. (1925c.21. Housing act 1980)²

The example above can also account for the high interruption and syntactic discontinuities between the different clauses forming one long sentence. As can be noticed, there are several syntactic boundaries at which the main clause and subordinate clauses alternate. In this respect, Bhatia (1993, 210) explains this situation in terms of a two-part interactive cognitive structure whereby the main clause is interrupted by qualificational clauses.

3. Nominalization

Legal English is also characterized by nominal clauses that replace the verb when expressing a given action. Crystal and Davy (1969, 205) observe that nominal structures, being post-modified with non-finite clauses, are frequently used compared to verbal groups in legal discourse.

4. Passivization

Another syntactic feature that contributes to the formality and complexity of English for law is the frequent use of passive voice. In this regard, Carlo (2015, 43) reveals that, in some cases, it would be preferable to use the passive form in legal English when the legal drafter would like to focus on the action rather than the agent. In a deeper line of thought, Elfarahaty (2015, 24) notes that the extent of passivization use depends on the genre of legal English in that contracts, for instance, include fewer, if not any, passives because of the need to focus on the actor.

5. Whiz deletion

Hovelsø (2004) reveals that legal language is also filled with non-finite relative clauses in which the relative pronouns and the auxiliary verb *to be* are deliberately omitted. This process is generally called *whiz deletion*, which functions as a post-modifier in a clause such as in article 5

and in the second paragraph of article 22 in the United Nations Convention for the Protection of the Mediterranean Sea against Pollution.

- 4) Excerpt 4: The Contracting Parties shall take all measures in conformity with international law to prevent, abate and combat pollution of the Mediterranean Sea Area caused by dumping from ships and aircraft...
- 5) Excerpt 5: ...to arbitration under the conditions laid down in annex A to this Convention.

6. Other syntactic characteristics

Other legal English syntactic idiosyncrasies are worth mentioning. For example:

- The use of negatives and double negatives in different ways such as *not*, *never*, *un*, *unless*, *except*, *in*, and *im* (Carlo, 2015, 47; Elfarahaty, 2015, 28).
- The employment of the determiner *such* without its indefinite article *a* in legal discourse Crystal and Davy (1969, 206).

7. Specific Employment of “shall” in Legal Texts

The use of the modal verb *shall* is best manifested in the fact that it is used not to express the future but obligation (Crystal and Davy, 1969, 206). In addition, Carlo provides a number of mainly deontic functions of the modal verb *shall* in English-for-law sentences that contribute to the understanding of some points discussed above as follows:

- a- In legal texts, *shall* is mainly used to express obligations and prohibitions. It can be used in qualifying phrases, specifying the essential features of the elements involved in the legal process and the parties involved, without which the understanding of the document would be impossible.
- b- *Shall* is also used in hypothetical clauses, which have the function of foreseeing the cases in which the legal act will be applied. It is usually introduced by *if*.
- c- The passive structure ... also enhances the levels of formality and complexity, which also occurs when *shall* is separated from the verb by noun phrases or adverbs, which are anticipated for the sake of avoidance of ambiguity.

B. Opposing views

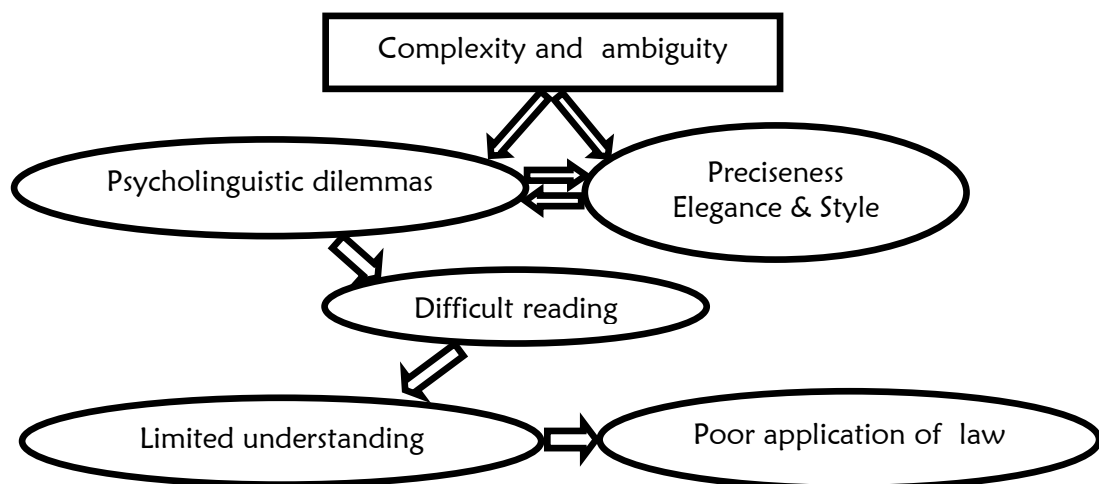


Figure1. An outline on the impact of legal English complexity on law understanding

Figure 1 shows how scholars hold different views as to the reasons for the complexities found in the syntactic constructions within legal English discourse and the impacts they might have on law readers.

It will be worthy to note that Crystal and Davy (1969) and Bhatia (1993), for example, illustrate the misplacement of the subordinations differently. On the one hand, Crystal and Davy (1969, 204) think that those insertions are used for the sake of elegance. Bhatia (1993), on the other hand, insists that the incorporation of adverbial clauses shall be considered judiciously for the sake of having precise legislative writing, not in terms of the ambiguity and the stylistic tone:

One would like to have as many syntactic points at which to insert them as are possible. But one consideration that makes this task even more difficult is the fact that if qualifications on the one hand make the main provisional clause more precise and clear, they can also promote ambiguity if they are not placed judiciously. That is the main reason why legal draftsmen try to insert qualifications right next to the word they are meant to qualify, even at the cost of making their legislative sentence inelegant. (Bhatia, 1993, p. 201)

Again, Carlo (2015, 43) thinks that the process of nominalization makes the sentence impersonal and ambiguous owing to the omission of its subject. In a different manner, Hovelsø (2004) argues that nominal structures, being post-modified with non-finite clauses, are used in legal sentences for purposes of precision.

As the process of *whiz deletion* is widely spread in English legislative writing, Elfarahaty (2015, 24) claims that structures such as *which is, which are...*etc. are deemed to be only used for stylistic motifs.

As far as the coordinators are concerned, especially *or*, Crystal and Davy (1969, 206) think that they prevail in legal language to minimize misinterpretations and maximize possibilities. This, therefore, from one's standpoint, promote preciseness in written legislations. In a more general view, Carlo (2015, 72) insists that the conservationists think that legal concepts are knotted in nature and have a pragmatic function that can only be expressed through the use of considerably complex linguistic constructions.

Returning to the previous explanations, the set of those subordinate clauses stated at the beginning of periodic sentences are likely to cause problems to the law reader, unlike the main clause that is stated clearly (Bhatia; Carlo; Hovelsø). As a result, the law reader must read all the adverbials that carry additional information within one sentence. "This of course makes reading very difficult - one may have forgotten how the sentence began when one reaches the end of it and finally arrives at subject and verb" (Hovelsø, 2004). Likewise, "the repeated interruptions of the main clause by the numerous qualifications make the text difficult to read, but also allow for a greater degree of precision" (Bhatia, 1994, as cited in Hovelsø). Consequently, it can be convenient to bear in mind that the syntactic discontinuities caused by both long qualifying and misplaced adverbial clauses, even if justified, will make way to the inescapable consequence of producing psycholinguistic dilemmas to law readers letting their heads 'spinning'. In fact, the problem can be worth of more attention if the written legislative piece is addressed to EFL law students, and it can be even a serious trouble when those EFL learners do not share the same legal culture. It seems that not only the syntactic discontinuities caused by the initial case descriptions and the misplacement of adverbials can engender cognitive and psycholinguistic

barriers to ELP readers, but also the rest of the syntactic characteristics of English for law, such as the special use of the modal verb *shall* in legal texts and the process of nominalization.

There is no doubt that difficulties in reading lead to difficulties in processing and understanding. Such a situation will result in poor application of legal texts and requirements in real-life situations, especially in international contexts. In fact, studies on ELP in Algeria, as constituting an EFL context, are very limited in number, let alone focusing on reading legal English. In this regard, one research (Promoting the Reading Skill through Blended Learning for ELP Students) was conducted by Lamri in 2015. He says that ELP students suffer from a lack of linguistic and strategic competences. Moreover, according to Lamri, most students face problems with the different levels of language, starting from lexis to syntax.

C. Towards Plain English Movement

It has been revealed through the present research that the syntactic complexities in English for law are perceived to have advantages only within the boundaries of the legal English community, which led numerous scholars to adhere to the plain English reform as an inevitable fate to decode its complexities. In fact, “The modern Plain English Movement began during the 1970s, thanks to David Mellinkoff’s *The Language of the Law* (1963), which gave birth to many reforms all around the world, promoting a simplification of Legal English” (Carlo, 2015. p. 62).

Goddard (2010, 50), for example, suggests some ways to make legal English plainer, namely:

- a- Promoting plain modern legal language, concise sentences, stated positively, focusing on one idea with subject + (active) verb + object where the main idea comes first;
- b- Avoiding ... long sentences, subordinate and embedded clauses, nominalizations, passive verb constructions, double negatives... etc.

In practical words, Elfarahaty (2015, 22) confirms that current legislations have recently begun to take into account the use of simpler language. In this vein, one can question the possibility of simplifying some acts, such as article 24 in the United Nations Convention for the Protection of the Mediterranean Sea against Pollution.

- 6) Excerpt 6: This Convention, the Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft and the Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency shall be open for signature in Barcelona on 16 February 1976 and in Madrid from 17 February 1976 to 16 February 1977 by any State invited as a participant in the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea, held in Barcelona from 2 to 16 February 1976, and by any State entitled to sign any protocol in accordance with the provisions of such protocol...

II. Discussion

English as a legal language is found to be in an unenviable position wherein pros require preserving the legal professionals’ jargon of English especially syntactic complexities, and opponents call for a more simplified version of legal English. In this respect, Bhatia (1993, 191) claims that many thoughts were expressed about the fact that what led English to be in its current

situation is the impossibility of striking a balance between clarity and all-inclusiveness. Carlo (2015, 63) argues that a middle ground should be achieved as to the use of plain English by minimizing complex aspects of legalese and simultaneously offering considerations to legal professionals' traditions.

Undoubtedly, the new coming fashion will eliminate some peculiarities; still, legal English may resist preserving its conservatism and idiosyncrasy because "the problem is that there is no universal agreement on the criteria that make legal texts difficult and simplification is a very complex process, because it does not only involve thorough analysis of the surface level of a text, but also psycholinguistic knowledge" (Carlo, 2015, p. 63).

The tension between legalese, with its complexities, particularly syntactic ones, and plain English movement, with its simplified writing, brings to mind the competition between prescriptivism and descriptivism where supporters of plain English discourse and reform opponents express opposite viewpoints. In this regard, both parties must agree on a solution that considers the need for some degree of complexities for precision, style and prestige. In parallel, they need to consent to decrease the 'abnormal' abusive insertion of subordinators within one sentence.

As shown in figure2, simple legal English should have powerful consequences on improving reading understanding for EFL law students. A good understanding of the nature of legal English syntactic complexities and adhering to the campaign of easing it will make its use more effective. Consequently, this will decrease ambiguity and solve many international conflicts.

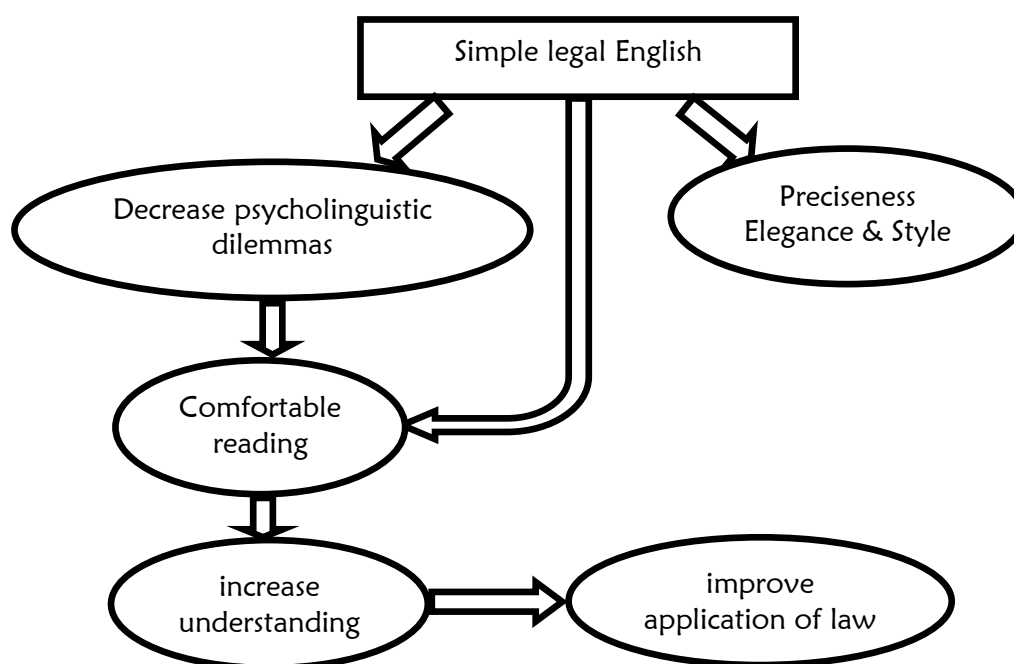


Figure2. An outline on the impact of plain English movement on law understanding

III. Implications

Based on the above-mentioned aspects of English as a legal language provided by theoretical linguistics, this work suggests that EFL law students' understanding of legal English can be promoted via a number of points. First, there is an urgent need to conduct more theoretical

and empirical studies on the unique style of legal English especially when related to an EFL context. Second, ESP/ELP teachers must develop their learners' reading skill in English-for-law syllabi. In this respect, students' awareness must be raised as to the idiosyncratic syntactic structure of legal English and the impact of understanding it upon academic, then professional life. This should be best manifested in dealing with legislative documents and contracts that constitute the vehicle of international practices. Teachers also have to join the plain English movement by opting for, adapting or designing in-house legal English materials whose linguistic content is simple. Doing so, the ELP course designer needs to strike a balance between the needed structures for preciseness and the decreasing of the complexities and the psycholinguistic dilemmas. In addition, students' motivation must be fostered to adopt cognitive strategies to process any faced ambiguity well, especially when the excerpt lacks punctuation as the latter constitutes a prominent feature of English legal discourse.

Should the aforementioned suggested solutions be implemented, a better understanding of legal texts will be enhanced. Such solutions may help in resolving language-related dilemmas and improve social life, not only because law is per se a basic social activity, but also because it is attached to all sides of life.

Conclusion

Undoubtedly, the present study is of central importance in that it offers insights into the very complex nature of legal English syntactic structures. It shows how legal English drafters follow an unusual method of clauses order within one sentence and use other syntactic features such as the one-word nominalization as an alternative to a whole clause. Moreover, it sheds light upon the impact of those complexities on EFL law learners' psycholinguistic and cognitive sides. It also discusses the plain English movement's potential influence on the common controversial viewpoints on ambiguity. Finally, this work recommends the following: first, merging both theoretical parties by establishing a middle ground; next, implementing ELP course design that offers EFL law readers a secure command of legislative documents; and last, developing EFL law students' leading role in life as this concerns the language of international legal practice in the era of globalization.

1 See the examples analysis in the appendices section.

2 This article is no longer contained in the last version of the Housing Act issued in 2004.

Appendices

Excerpts Analysis

Excerpt 1

| Part | Classification |
|---|--------------------|
| If the liquidator or trustee does not comply with any provision of this section (or fails as trustee duly to pay the long service leave charges for which the liquidator or trustee is liable under sub-section (3) the liquidator or trustee | Adverbial 1 |
| must | Verb |
| to the extent of the value of the assets which have been taken into the liquidator's or trustee's possession and which are or have been available at any time for the payment of the long service leave charges | Adverbial 2 |
| be | Verb |
| personally liable to pay the long service leave charges. | Subject complement |

Excerpt 2

| Part | Classification |
|---|----------------------------------|
| The Mortgagor | Nominal phrase (Subject) |
| shall pay | Verb phrase |
| to the Bank | Adverbial (Prepositional phrase) |
| all and every the sum and sums of money which now are | Adverbial (Complement) |
| or (to maximize possibilities) | Conjunction |
| shall | Auxiliary verb |
| at any time | Prepositional phrase |
| be owing | Verb phrase |
| to the Bank by the Mortgagor. | Adverbial (Prepositional phrase) |

Excerpt 3

| Part | Classification |
|---|-------------------------|
| Where the dwelling-house with respect to which the right to buy is exercised is a registered land, the Chief Land Registrar | Adverbial clause |
| shall | Verb |
| if so requested by the Secretary of State, | Adverbial (conditional) |
| supply him | Verb phrase: |

| | |
|---|----------------------------------|
| on payment of the appropriate fee | Adverbial (Prepositional phrase) |
| with an office copy of any document required by the Secretary of State | Adverbial (Prepositional clause) |
| for the purpose of executing a vesting order with respect to the dwelling house | Adverbial (Prepositional clause) |
| (and) shall | Verb |
| notwithstanding section 112 of the Land Registration Act 1925 | Adverbial |
| allow | Verb |
| (+allow, provisional clause as Bhatia put it, 1993) any person authorized by the Secretary of State to inspect and make copies of and extracts from any register or document which is in the custody of the Chief Land Registrar and relates to the dwelling-house. | Adverbial |

Excerpt 4

| Part | Process |
|--|--|
| : which/that is caused by dumping from ships and aircraft... | Whiz deletion (of the relative clause) |

Excerpt 5

| Part | Process |
|--|--|
| ...to arbitration under the conditions that/which are laid down in annex A to this Convention. | Whiz deletion (of the relative clause) |

Excerpt 6

| Part | Classification |
|---|-------------------------|
| This Convention, the Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft and the Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency | Nominal phrases/clauses |
| shall be open | Verbal phrase |
| for signature | Prepositional phrase |
| <i>in Barcelona on 16 February 1976 and in Madrid from 17 February 1976 to 16 February</i> | Prepositional phrases |

| | |
|--|----------------------|
| <i>1977</i> | |
| by any State invited as a participant in the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea, | Prepositional clause |
| held in Barcelona from 2 to 16 February 1976, | Verb clause |
| (and) by any State entitled to sign any protocol in accordance with the provisions of such protocol... | Prepositional clause |

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