

## Pragmatics Book Review

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### **A Pragmatic Analysis of Legal Proofs of Criminal Intent**

**Author :** Sol Azuelos-Atias

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#### **A) Book Summary:**

In *A Pragmatic Analysis of Legal Proofs of Criminal Intent*, the author Sol Azuelos-Atias investigates how criminal intent is proven in Israeli courtrooms through pragmatic analysis. The author has translated most of the criminal cases. The book talks about the legal-criminal discourse among judges, prosecutors, and defense counsel. Israeli legal system is greatly influenced by Israel's historical background. So, the legal system is continental in nature, with some Muslim characteristics from the Ottoman Empire. Israeli law has taken some of its legal sources from Jewish, Muslim and Christian culture depending upon the parties involved for religious laws like marriages. Israel's criminal law is written and follows modern ideas of justice, fairness, and due process.

Crimes such as premeditated murder (Chapter 2) are treated seriously and require the accused to prove they did not intend to commit the crime. If the prosecution can prove the crime was planned, it's considered worse and carries harsher penalties. Israeli criminal law treats actions that were planned and actions that were not planned differently. Continental legal system can be found in the rejection of the jury system, the civil body of laws like contracts and properties, etc.

There are two types of elements of offence which can be seen Actus Reus (=factual element) and the other is Mens Rea (=mental element). The existence of factual cause can be determined through "but-for" test. The author uses three strategies to understand criminal intent. The first is "Grammatical Strategies" which focuses on constructing cohesive (=facts and information that fits together) and persuasive narrative texts that presents facts. The second is "Pragmatic Strategy" which focuses on judge's choice between evaluative and descriptive models of interpretation to assess the facts. The third strategy is the "Interpretative and Argumentative Strategy" which says that facts alone do not fully determine whether someone's

intentions were criminal or not. Instead the legal system suggests that we must merge abstract nature of law with concrete crime to give our verdict.

The book argues that "legal truth" is not absolute (=perfect) but tentative (=experimental), meaning that the truth of a case remains valid until proven otherwise. In legal settings, the prosecutor (=a lawyer who leads the case against the accused person) and the defence lawyer (=a lawyer representing a defendant in a lawsuit or criminal prosecution) builds on their story based on the criminal activities and both tries to cast doubt. They interpret their information differently.

The right choice of words helps the speaker add or emphasises the meaning to what they want to say which can also hint to what is important. The prosecutor's view of the complainant (=victim) is shown in the language used to describe him whereas, the prosecutor's opinion of the accused is shown by vocabulary which is not legally marked, making it objective in nature. Hart and Honore (1987) says that law is about what ordinary people think and not what philosophers/ scientists think. Michotte (1963) studied the notion and found that people think the earlier event is the cause of the second when they happen close together. Causal expressions are used in legal discourse to describe the relations between events, actions and intentions. They are also used to establish relations between concrete occurrences and legal principles.

The author assumes that the court tries to communicate effectively with the citizens appearing before it. This is done by the court to discover the legal truth and give justice. The author tried to apply speech acts theory where in he says that speech act indicates the minimal unit of communication. Azuelos says that people use language to make claims, ask questions, give order, describe, explain, thank, etc which are called purposive speech acts. They are based on social, cultural aspects. They express the speaker's intention in a given situation. (pp. 55 - 56). Speech Acts is used here to study of "reasonable person". The reasonable person can be used in two ways. One in directive utterances to show values of the legal system and in informative utterances where it can express a normative empirical descriptive tests. If "the reasonable person" is used in legal cases, we can understand how the court sees the values that Israeli society sees as moral and ethical. When the "reasonable person" is used in informative utterances, it is seen as a test reflecting the habits and values of the public. In that case, it is used as a test to see if everyone would act the same way in those circumstances. Azuelos (2007) says, that "the reasonable person" is a descriptive measuring rod which is based on the majority's democratic values. When examining a specific use of this legal settings, cases involving individuals in similar circumstances are considered.

The author looks at two ways of interpretative and argumentative strategies which are used by the people in Israeli legal system. This analysis develops a linguistic tool for analysing the judge's attitude towards the trial participants. The first strategy is called the "audition model". In this strategy, a story is shaped to suit the legal

patterns of norms. The “audition model” strategy compares the judge’s situation in court to that of a producer organising an audition. Both side parties are only interested in the people in front of them only to the degree that they fit in the requirement of the story. The second strategy is the “ultimate narrator model”. Judges use this model to shape the story to fit legal patterns and connect it with the beliefs, motivations and emotions of those involved. In the “ultimate narrator model”, the judge knows everything that happened. He looks at the occurrence from every angle as if he could see it through each witness’s eyes.

The author focuses on the level of occurrence. A causal relation can be stated explicitly, like “death was caused by beating.”, “Following”, “on account of”, “because of” and “as a result of”. The speaker uses expressions of simultaneous actions to create an impression of a physical causal relation like [...verb 1 + *when/ when not* + verb 2] (pp. 34). The book follows series of criminal cases used for studying pragmatic analysis and legal discourse.

In Case Study 1, the defendant was found guilty of threatening a woman who tried to end their relationship. According to Section 192 <sup>1</sup> which covers threat if someone threatens another with harm they can be imprisoned for three years. In this case, Judge Beinisch looks at the situation and considers the sender, receiver and their relationship. The judge says that the case happened because the appellant was in a romantic relationship with the complainant who was younger and worked for him. The man was threatening the girl that he will post his photos and also tell her family members that she had done an abortion. Here, the judge uses the test to distinguish between a warning and a threat based on two factors - the sender’s influence and the message’s effects on the recipient. The appellant’s conduct would scare any young woman in the complainant’s position. It would make her afraid of being discredited and losing her mental stability. (pp. 72) Since the threats and rumors reached the complainants through her family causing her anxiety tells us that these were threats. The judge describes the effects of the threat using strong words like “real apprehension” and “anxiety”.

In Case Study 2, Boris Yaakubov, the Appellant used to beat his wife. Once his wife complained to the police, on return he hit his wife and his wife jumped out of the building in fear and died. The judge uses the report that says that in violence, any average person would have feared the danger of suicide. The Judge also mentions the Agranat Feller Kremnitzer Committee and says that people now realize that abuse and violence against people can lead to suicide. So, it is fair to say that the reasonable expectation is based on reality.

Another Case is of Gabay vs the State of Israel (Criminal appeal 70498/01) (pp 73). Gabay was accused of threats of murder under the provision of Section 307 <sup>2</sup>. The accused (Nissim Gabay) wrote to the Chief Commander of the Army (Prime Minister Ehud Barak) to complain that the army was trying to impose on his son. His son was

assigned to the Armored Corps which did not suit him. The army tried to force this assignment on him by jailing him. He asked for a more suitable assignment. The judge says that the appellant's words should be interpreted not only on their meanings, but also the circumstances and intention behind them. The legal claim is that the appellant did not mean to threaten but the letter was a plea for help. The appellant believe that he had no choice but to take any step to save his son. The judge says that the question of whether the letter is a threat is decided by looking at what a reasonable person would think.

In the criminal appeal 3071/92 Azuelos vs Israel verdict, the appellant killed his wife and neighbour after they confessed to him that they loved each other. The supreme court focused on whether the killings were justified. If the victims behaviour provoked the shooting, it was manslaughter. Otherwise, it was murder. The District Court said that the reasonable person would find it hard to attack their wife if she had a physical relationship with another man. Therefore, they would not have been able to react in the same lethal manner as the accused. The former Supreme Court Judge Barak, accepted the appellant's version that he had shot his wife and neighbour. Here, the focus is on "provocation" - (kintur, hitgarut) like they hugged, kissed, showed their mutual love in front of his eyes.

The prosecutor implies state of mind are syntactic or lexico-syntactic (adverbs), lexical as well as semantic and pragmatics. The prosecution uses these means to show how the defendant's actions caused the results. The defense tries to show that the prosecution's interpretation is wrong. The idea of cause and effect can be seen in different types of crimes. For example, the defendant is accused of killing his wife. The prosecution says that the defendant waited for his wife and had the weapon to kill her. The prosecution says the defendant's state of mind caused the victim's injuries and death. The beating is described as a part of a situation suggesting the defendant had the intention to kill. In this case, the prosecutor showed that the defendant intended to kill by telling witnesses about the defendant's plan and by showing that the defendant had the weapon before waiting for the victim. This fact is shown by using the patten "being acted" (while equipped) which describes what happened before the event. The meaning of this pattern is different from what it was before. It is now about murder before the attack and beatings. The prosecution said the defendant had already made plans to do what was done. In another case, the defendant was accused of rape. The prosecution had to prove that the defendant had sex with the complainant without her consent. If someone doesn't consent to something, it can be proven by the order in which events happened. In this case, the prosecution said that the defendant used force and threats to get the complainant to cooperate. They implied that the complainant's cooperation was not because she wanted to, but because of the defendant's actions.

Another case, where the defendants went to the flat where the complainant was staying. They started a fight and the complainant was hurt badly. The defendants

were accused of harming the victim on purpose. The prosecution used the timing and location of the events to show the defendant's intent. The defendant entering the flat right as the fight started shows the events in time and place. The prosecution implied a causal link between the defendant's conduct and the harmful result by showing that there was a short time between the defendant's arrival and the fight. A short time lapse makes it seem as if one action caused the next. The issue of the factual cause becomes problematic when the causal chain between the defendant's conduct and damage is severed by an external cause. If something else causes the result, the original cause is not the legal cause. This can be human action or coincidence. A person can only be convicted for damage caused by their conduct if the connection between two is not broken by human action. This principle is based on the common sense test used in English law. The test says that there is no causation if it is caused by human action, an act of God, or coincidence. Israeli law also accepts the common law test. The reasonable foreseeability test can be used when the link between the defendant's action and the result is broken by human action. If a reasonable person would have anticipated the human action that severed the causal line, the defendant's conduct is the legal cause of the damage.

Israeli law uses the reasonable person test from English law, but not the jury system. This concept has always been used as a measuring rod in different areas of Israeli laws. However, Israeli judges have never agreed on how to apply it. This confusion may be explained by the fact that "reasonable" is an adjective that can mean different things, it can refer to logic and thinking or to behaviours, opinions and the results of those behaviours. The term "reasonable person" is open to interpretation. There is mention of the Hebrew dictionary which defines it without considering the legal principle. It says questions about the reasonable person's behaviour shouldn't be answered based on what's seen or heard.

The book also talks about "reasonable person" <sup>3</sup> which is used in legal settings to show the values of Israeli society. Shachar says the reasonable person is a role model. This is part of the education concept of Israeli legal system, which uses laws to guide, prohibit and threaten people. Punishment is meant to show that the legal system's messages are important and that people should take the rules seriously. Shachar says that reasonable person test should help people understand the law. This is useful for people who want to know the law to respect it and for people who want to know it to break it.

## **B) Book Appraisal:**

The words used by the speaker can make a big difference in how something is seen. In legal settings, the way the action is described could tell us to whom it is biased. In the first case, the defendant threatened a woman he was dating. The judge looked at whether the defendant meant to threaten or was giving a warning. They used common sense to see how the woman and society understood the words and its meaning. The judge considered how an average woman would interpret these threats. Strong choice of words like “real apprehension” and “anxiety” also shows the emotional effect the defendant’s words had on the woman. We can understand from this that pragmatics meanings comes not just from words but also from context, relationships and the power dynamics between the speaker and listener. We can also understand how the speech affects the woman emotionally and mentally. So, here the judge looked at whether the words meant a threat by thinking how they made the listener feel. Prosecutors must prove that the accused person's actions caused an event to happen. Oral arguments in law are different from science and math because they can't use a fixed set of premises. The book mentioned the Bible. People believe it was written by God, but scholars decide what it means. Scholars can present the text in different ways. It can be interpreted in positive and negative ways. The judge decides if a law applies or if new laws are needed. We can see that words affect how facts are understood.

From Case Study 2, we can understand how the judge presents the reconstruction of Galena’s inner world “The deceased had put an end to her life, out of despair, in reaction to the appellants continuous violence, which viciously erupted especially after she dared apply to the police.” With this quoting, the judge showed two articles that showed women who are frequently beaten and finds no support from environment becomes so desperate that they eventually kill themselves. Further, the judge looks at the husband’s action and decides that he was wrong to act in such a way. The judge decides that the husband’s violence caused Galena’s death. But one cannot be charged for causing someone’s death. So the judge termed this case under “negligence”. He further quoted that negligence is expressed by the average person’s ability to be aware of the circumstances of the event, even if they are not aware of them (Appendix 2, pp 69). For this, the second strategy was applied. The judge’s decision was influenced by the external knowledge about the women being beaten and not getting any support. This particular information helps the judge and audience understand why the husband acted as he did. The judge uses phrases like “out of despair” and “continuous violence” to show that Galena was driven to suicide by her husband’s actions. From this, we can pragmatically understand that the husband’s behaviour caused this as the words are showing that one event led to another event. We can understand from this that how legal discourse can be used amongst judges and lawyers. Here, they showed how emotions, thoughts and events

are connected and how they are spoken in legal arguments. A pragmatic analysis from this shows links between actions and results.

In Case of Hamdani the judge rejected his appeal because the judge considered how his actions would be viewed by a reasonable person. The decision was clearly influenced by values. In this case, the values at stake are a woman's right to decide what she wants to do with her body. These values lie at the heart of the reform of Israeli penal law sections dealing with rape. The right to bodily autonomy, honor, and freedom from sexual exploitation is now protected for all people, regardless of sex. Before any reform, the protected interest was the husband's right to defend his property and prevent any foreign penetration. This traditional attitude allows men to force sexual contacts on woman who don't belong to them. Hauptman says this traditional approach led to the idea that "once a prostitute, always a prostitute." If a woman has had sex before and says she was raped, it is likely that she had sex willingly. She is trying to accuse her innocent partner. According to the new changes in rape laws, the judge says that even though the complainant used her sexuality to get special treatments, she still has the right to decide how to use her body. Like any other woman, she can have a romantic relationship with anyone and that men often tries to make their female partners act monogamously. Israeli law does not protect monogamy.

In the criminal appeal 3071/92 Azuelos vs Israel verdict, the judge looks at the situation from the appellant's point of view considering all aspect. The appellant only realized his wife was unfaithful when he saw her kissing the neighbour and heard him say, "This is the truth. You may jump." This truth shocked him. There is description that his eyes grew dark. His world fell apart. He took his weapon and shot his neighbour and his wife. (Criminal Appeal 3071/92, pp 80). Then the appellant turned himself in to the police. The judge said that the appellant's state of mind was shaped by the discovery of his wife's infidelity. The judge uses this idea to judge how a reasonable person would act. The judge decided seeing his wife and neighbour kiss has made the appellant lose control and kill. Infidelity was big enough deal to make the man violent.

In the Gabay Case, the appellant had used exclamation marks and had written "Final warning" and "final caution". The words speak for themselves. When it is said: I might kill anyone, that is considered a threat. The reader is afraid the appellant is warning him that he is at the limit of his patience. The words are clear. The judge's words show that Mr. Gabay's letter can only be interpreted one way. Anyone reading it would be scared. For example, if we assume that every male baby has an oedipal impulse to kill his father, it follows that the only thing saving all male babies from juvenile custody is that they don't express their feelings in writings. (pp 75). The words written by the appellant can be interpreted as serious threats. Exclamation marks here also adds to the tension as they are seen as aggressive.

In the case, where the defendant was accused of rape. The prosecution had to prove the defendant had sex with the complainant without her consent. If someone doesn't consent, it can be proven by the order of the events. They said she cooperated only because of the defendant's actions. In the movie Pink, a similar case had occurred where the lawyers were blaming the complainants that it was consented and when the prosecutor tried to prove that it was wrong. We can see the infamous dialogue of Amitabh Bachhan who was the lawyer of the complainant, "No means No."

What we can learn is that both parties (the prosecutor and the defense lawyers) tell stories to convince the court of their perspective. They try to make their version of reality seem the most reasonable and accurate. Let's take an example, there is a scenario where many people are fighting with each other and one person has got hurt badly. Let's say these two were fighting for 50% sales on Diwali clothes and diyas. It started with a normal statement, which then laid to arguments, and then the arguments laid to fights. Where these two started fighting in a physical way. If this were to be interpreted in court, The prosecutor might say, "The defendant pushed the victim with the intent to harm." The prosecutor makes the act seem deliberate by using words like "aggressively". The defense might say, "My client just nudged the victim during a fight." The defense makes the action seem less severe by using "nudged" instead of "pushed." But from this, we can understand how different choices of words can be used to interpret the situation. From the prosecutors side this situation seems to be serious but from the defendant's side this situation is not as serious as a crime. Similarly, during my internship in news agency, I learned that if the dog is biting the human that doesn't become a news but a human is biting a dog does become a news. From which, we can say that choices of words matter.

The prosecution often presents events that happened close together as evidence of premeditation. The defense might say these actions were unexpected or spontaneous, which show that they are not premeditated. This is similar to how Hume saw causality. In law, showing that two things happened at the same time often leads to conclusion about the intent. But the causality is not always clear. From this, we can understand that in court events are often described using official terms, which makes it sound objective and neutral, even though each side is trying to influence the outcome. The way time, actions and circumstances are described by the lawyers is planned to make the argument stronger.

## **Glossary**

1. Section 192 - If a person in any manner threatens another with unlawful injury to his or to another person's body, freedom, property, reputation or livelihood with the intention of intimidating or annoying him, then he is liable to three years imprisonment.



2. Section 307 - If a person directly or indirectly causes another to receive a written message that threatens murder, knowing its contents, then he is liable to seven years imprisonment.
3. Reasonable person - It is a fictional character used to establish a benchmark for determining if someone's actions were reasonable or negligent. The reasonable person standard is a legal concept that helps apply the law consistently and objectively. This fictional person has an ordinary degree of reason, prudence, care, foresight or intelligence whose conduct, conclusion or expectation in relation to a particular circumstance or fact is used as objective standard by which to measure or determine something (as the existence of negligence).
4. Premeditated Murder - It is a murder that is planned in advance and carried out with a deliberate purpose.
5. Apprehension - A feeling of fear that something bad may happen.

### References:

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