

**LAST WILLS AND TESTAMENTS
AS A SOCIALLY MOTIVATED SPEECH ACTION
(BASED ON ENGLISH LAST WILLS AND TESTAMENTS
OF THE MID XIX – EARLY XXI CENTURES)**

Olha Kulyna¹

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Abstract. A Last Will and Testament as a legal document of Inheritance Law is of particular importance for the life of modern societies of all developed and underdeveloped countries. However, the study of the genre of legal discourse has hardly been the object of linguistic research. The article focuses on the analysis of the study of English Last Will and Testament as a social and communicative phenomenon which reflects socially determined needs of a testator in the situation of bequest. English Last Wills and Testaments often illustrate individual experience, every day life, social relations and even power. They also touch upon the questions of moral values in the society: evaluate right versus wrong, justify decisions, intentions and actions. The article presents an attempt to cover one aspect of the genre research, namely performative speech acts which are typical for wills. Genre performative modelling is carried out and it is proposed to consider English Last Will and Testament to be a complex performative. It is revealed that three types of explicit performatives singled out by J. Austin are common for wills: 1) *I verb that*; 2) *I verb to*; 3) *I verb*. Performative speech acts have been singled out: exersitives show the decision of a testator about the distribution of property to a certain person and appointment of executives (*bequeath, direct, give, order, direct, declare, devise, leave, further, appoint, nominate, constitute, empower, vest, entitle, assign*); expositives reveal the act of revocation (*revoke, (make) void, rescind, annul, disallow*); commissives express inclination to a certain action (*request, declare my intention*).

The novelty is given to the analysis of Last Will and Testament as a social and communicative phenomenon which is generated in the situation

¹ PhD in Philological Sciences,
Associate Professor of the Department of Applied Linguistics,
Lviv Politechnic National University, Ukraine

Types of performatives by J. Austin

Type	Direction of the action	Key words
Verdictives	give opinion, decision, approval or assessment	<i>acquit, convict, find (as a matter of fact), read it as, rsule, calculate, reckon, take it, grade, rank, rate, assess, value, describe, characterize, diagnose, analyse etc.</i>
Exercitives	express power, rights or influence and make decisions in favor or against any action (order, coercion, warning, advice, appointment)	<i>dismiss, excommunicate, demote, name, order, sentence, levy, choose, bequeath, warn, command, direct, fine, nominate, claim, give, announce, countermand, enact, reprieve, dedicate, declare etc.</i>
Commissives	express a promise and incline to a certain action	<i>promise, covenant, undertake, bind myself, am determined to, intend, mean to, contract, give my word, declare my intention, , plan, purpose, propose to, shall, swear, guarantee, vow, agree, consent, dedicate myself to, declare for etc.</i>
Behabitives	denote the reaction to the point of view and behavior of people (apology, praise, sympathy, quarrel, greeting)	<i>apologize, thank, deplore, commiserate, compliment, condole, congratulate, felicitate, sympathize, resent, don't mind, pay tribute, criticize etc.</i>
Expositives	denote utterances which show the attitude to the conversation	<i>affirm, deny, state, describe, class, identify, report, swear, conjecture, interpose, withdraw, inform, apprise, tell, answer, rejoin, ask, testify, agree etc.</i>

commissives and expositives. Exercitives express the testator's decision to pass property in favor of a certain person:

First I give and bequeath to my two nieces MARY ANNE PENNELL, daughter of my brother RALPH PENNELL along with my niece SARAH PENNELL (daughter of my brother RICHARD) all of my whole property to go share and share alike in profit or loss consisting of cattle, horses, swine... [Robert Pennell, 1849];

I give to the minister and chapel wardens of Aston by Sutton the sum of one hundred pounds upon trust to place out the same at interest and expend so much as may be wanted from time to time in keeping in repair my brother's tombstone (under which I hope to lie) and also that of my Uncle

aunt and cousin PENINGTONS Tombstone and to distribute annually the surplus of any of such interest amongst the deserving poor of Aston at their discretion [Sarah Beckett, 1849];

I order and direct all my just debts funeral and testamentary expenses to be paid and discharged by my Executors hereinafter named as soon as is conveniently may be after my decease [Sarah Stelfox, 1843];

I give and devise unto my grand-nephew EDWARD PERKIN and his heirs the small piece of Freehold Land which I purchased from Peter Pickering situate in Antrobus near the Pools Plat Farm and I also give and bequeath to my said grand-nephew EDWARD PERKIN the best of my two writing desks my best Family Bible and my house pistol [John Barlow, 1839];

And I further declare that my said trustees or trustee for the time being shall stand possessed of my said residuary personal estate and the moneys arising therefrom and also from the sale of my said real estate upon the trusts following that is to say as to one equal third part thereof in trust for my brother JOHN BARBER [Hugh Barber, 1857];

If I am incapable of making an informed decision regarding my health care, I direct my health care providers to follow my instructions as set forth below [John Peter Smith, 2010];

I direct that my life not be extended by life sustaining procedures, except that if I am unable to take food and water by mouth, I wish to receive nutrition and hydration artificially [John Peter Smith, 2010].

It was found that the verbs (denoting the bequest) not mentioned by J. Austin and other linguists are also used in Last Wills and Testaments:

I leave the three children of the late Mr RICHARD BAMFORD of Oldham namely FRANCES BAMFORD THOMAS BECKETT BAMFORD and RICHARD BAMFORD each one hundred and fifty pounds [Sarah Beckett 1849];

I make the following gift money: I give to my godson Barry Salt free of all taxes and death duties the sum of five hundred pounds sterling [Andrew Smith, 2005].

First I do hereby will, order and direct that all my just debts, funeral and testamentary expences be paid by my executors whom I shall herein name [John Wright, 1849].

The act of bequest is commonly expressed by the following verbs: *give, bequeath, direct, leave, dispose, will, advance, declare.*

We also consider the nomination of fiduciaries (executor(trix), trustee) as exercitives. In wills, they are verbalized mainly by keywords *nominate, constitute, empower, authirise, vest, entitle, assign* та *appoint*:

*And I **nominate constitute and appoint** my Wife ANN WRIGHT aforesaid and my son JAMES WRIGHT junior Executrix and Executor of this my Will hereby revoking all other testamentary writings [James Wright, 1846];*

*I **appoint** my Daughter ELIZA WILD my son JOHN WILD and my son in law SAMUEL HOWARTH Trustees and Executors of this my Will [George Wild, 1857].*

Thus, the exercitives in the wills are expressions of: a) the actions of bequest (*bequeath, direct, give, order, declare, devise, leave, further*) and the actions of appointing executors (*nominate, constitute, appoint, empower, vest, entitle*).

Commissives are also typical of wills:

*I **request my Trustees** within three months of my death but without imposing any binding trust or legal obligation **to dispose of the same** in accordance with any memorandum of wishes of mine which may come to my Trustee's attention within one month of my death [Andrew Smith, 2005];*

*I **request** that my body **be cremated** and the expenses relating to my funeral shall be a first charge on my estate [Judy Ann Jones, 2015].*

The utterances of revocational part of will (*revoke, void, rescind, annul, disallow*) are considered to be expositives. For example:

*And I **hereby revoke** all former Wills and testamentary dispositions made by me [Princess Diana, 1993];*

*I **rescind** all former wills in witness [Charles Hubbard, 1850];*

*And I do hereby utterly **disallow revoke and annul** all and every other former testament wills [George fowler, 1846].*

Expositives are also represented by constructions with an affirmative verb *do*:

*I Robert Pennell of Wistaston in the county of Chester **do make and publish this my last Will and Testament** [Robert Pennell, 1850];*

*I **do hereby ratify and confirm** this and no other to be my last will and testament [Stephan Messing, 1839].*

Table 2 lists the performative verbs that occur in English Last Wills and Testaments. Our analysis helped to supplement this list, as well as to find that binary constructions of performative verbs were used in the genre.

Table 2

Key words of performative speech acts in Last Wills and Testaments

Type	Direction of the action	Key words
Exercitives	express the testator's decision to pass the property in favor of a certain person and to appoint feduciaries	<i>give, bequeath, direct, leave, further, dispose, will, advance, declare, commend, commit, authorize, nominate, constitute, empower, vest, entitle, assign ma appoint</i>
Commissives	incline to a certain action	<i>request, declare my intention</i>
Expositives	introduce revocation of a previous will	<i>revoke, void, rescind, annul, disallow</i>

Another feature of speech acts is that they are expressed by complex long sentences. For example:

And I hereby declare that in case the said annuity or yearly rent charge of forty eight pounds or the aforesaid proportionate part thereof shoul at any time or times be in areas and unpaid in the whole or in part for the space of fourteen days nrxt after any of the days or times hereinbefore appointed for payment thereof then and so often as the same shall happen it shall be lawful for my said wife her executor Administrators or assigns to enter and distrain for the same and for the costs and expences occasioned by the non payment thereof upon all or any part of the hereditaments and tenements hereby charged with the payment thereof in the same manner in all respects and with the like consequential rights as landlords are authorized by law to do for rents reserved upon common demises [William Bankes, 1857];

And I bequeath unto my said son Charles and my son Henry Fielding Dickens, the sum of 8, 000 upon trust to envest the same, and from time to time to vary the investments thereof, and to pay the annual income thereof to my wife during here life, and after her decease the said sum of 8, 000 and the investments thereof shall be in trust for my children (but subject as to my daughter Mary to the proviso hereinbefore contained) who being a son or sons shall have attain or shall attain the age of twenty-one years, or being a daughter or daughters shall have attain or shall attain that age or be previously married, in equal shares if more than one [Charles Dickens, 1869];

I direct that my Trustees shall as soon as conveniently may be after my death give in writing to my said son-in-law the option of purchasing at a value which shall be agreed with The Commissioners of Inland Revenue as

the value thereof for estate duty purposes following my death (hereinafter referred to as “the probate value”) all or any of (l) my racehorses stallions broodmares followers and fillies excluding those which shall have been selected by my said 30d-in-law pursuant to Clause 13 hereof (ii) my freehold Farm and lands known as New Chapel Stud Llingfield in the County of Surrey and the farming machines implements utensils and dead stock therein or belonging thereto (lii) my freehold cottage known as 23 Bakers Lane Lingfield aforesaid (all of which are hereinafter collectively referred to as “my Stud”) [Winston Leonard Spencer Churchill, 1963];

I give Charitable Legacies to the charities listed for their general charitable purposes and I DIRECT that if any charitable or other body to which a gift is made in this my Will has changed its name or amalgamated with or transferred its assets to any other body then my Trustees shall give effect to the gift as if it had been made to the body in its changed name or amalgamated form or the body to which it had transferred its assets or as the case may be and I FURTHER DIRECT that the receipt of the person who appears to my Trustees to be the bursar treasurer or other proper officer for the time being of any charitable or other body to which any gift herein is made shall be a sufficient discharge to my Trustees: 1. One Thousand Pounds, £1,000 to The RNLI, West Quay Road, Poole, Dorset BH15 1HZ registered charity number 209603 2. Nine Hundred Pounds, £900 to The Battersea Dogs Home, 4 Battersea Park Rd, Battersea, London SW8 4AA in recognition of all the love and happiness shared with my dogs Pooch and Scruffs [Judy Ann Jones, 2015].

Such a structure gives grounds to consider Last Will and Testament as a complex performative text with complex structures. In wills performative speech acts are considered as communicative actions, however, it should be noted that the action of bequest and the entry into force of the will are postponed in time.

A model of analysis has the following structure: communicative intention of a testator → act of bequest → linguistic means to carry actions in performative speech acts. The action of bequest is performed in the practice of jurisprudence, which is governed by conventions that affect the legal acts of communication. J. Austin considered conventions governing acts of communication, as the conditions necessary for successful interaction within the regulated speech situations [Austin, 2006, p. 31–33].

Thus, wills are logical sequence of performative speech acts, which have illocutionary force and are the action of bequest.

4. Conclusions

The study of language as an action is one of the fundamental principles of modern linguistics. One should understand concepts that determine the basic parameters of socially conditioned communication. Verbal communication as a type of human activity, on the one hand, carries a personal potential, is based on human (subjective) factor, and, on the other hand is formed under the influence of social culture and social conventions on speech behavior in a particular situation

Social institutions generate different types of institutional discourse, which are embodied in the repetitive functional and semantic units of system-organized signs. The processes of meaning-making in institutional discourse are procedures of social mapping that reproduce the multiplicity of social space. The latter are embodied in numerous genres.

The genre of Last Will and Testament is embodied in the performative text. Performative text is a complex speech formation, which functions in the act of communication, and the action is involved in it, because what is said is accompanied by its implementation. The will as a complex performative is represented by a logical sequence of performative speech acts with illocutionary force and are the action of bequest. The illocutionary force of these acts is subordinated to the intention of communicants.

Exercitives, commissives and expositives (linguistic means) are used in wills to realise this intention. Exercitives show the decision of a testator about the distribution of property to a certain person and appointment of fiduciaries. They are verbalized by verbs to denote gift (*give, bequeath, order, direct, devise, declare, dispose, will, advance, declare, leave, commend, commit and further*) and the nomination of fiduciaries (*nominate, authorize, constitute, appoint, empower, vest, entitle*). The revocation of the previous will is an expositive and the verbs *revoke, (make) void, rescind, annul, disallow* are used. Commissives express a predisposition to a certain action and are presented by the following verbs *request, declare my intention*). Commissives constitute the smallest number of all speech acts.

The analysis of Last Wills and Testaments shows that *hereby* and *herento* are often used between the subject and the predicate, which determines the

affiliation of speech acts to the performatives. In the wills of soldiers, the number of these units is less than in the wills of civilians. This is due to the fact that soldiers wrote wills when their lives were in danger during the war. As a result, self-proving affidavit was not obligatory.

Performativeness of English Last Wills and Testaments allowed us to postulate that a will as a genre of testamentary discourse is a complex speech formation that functions in the act of communication in the form of a series of speech acts that are integrated in performative text.

Last Will and Testament is a complex performative which consists of logical sequence of performative speech acts (exersitives, commissives and expositives) which are verbalised in performative text. The following model was suggested: *communicative intention of a testator in the situation of bequest – action of bequest – lingual means to implement action by performative speech acts.*

These findings suggest that further research should be conducted to investigate the conditions for a successful communicative goal expressed in Last Will and Testament.

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