

Passive Tense in English Legal Text

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Abstract: Passive tense has been the topic of much debate among the legal language authorities. While some propose its usage is a necessary form and style tool, others find its usage uptight, impersonal, and strange-sounding to the laypeople who also need to understand the legal language. This article brings forth a look at formation of passive voice constructions in English legal language. This grammatical concept, accepted or refused by the linguists, is a permanent fixture in legal language, and it involves downplaying of agency or responsibility. It may be used to show the idea of objectivity, to help prevent difficult sentence structure, or to provide variety in a paragraph. Passive voice constructions are an integral part of legal language and deserve further examination.

Keywords: legal English, passive voice, passive voice constructions, passivization.

1. INTRODUCTION

Passive tense has been the topic of much debate among the legal language authorities. While some propose its usage is a necessary form and style tool, others find its usage uptight, impersonal, and strange-sounding to the laypeople who also need to understand the legal language. This article brings forth a look at formation of passive voice constructions in English legal language. This grammatical concept, accepted or refused by the linguists, is a permanent fixture in legal language, and it involves downplaying of agency or responsibility. It may be used to show the idea of objectivity, to help prevent difficult sentence structure, or to provide variety in a paragraph. Passive voice constructions are an integral part of legal language and deserve further examination.

Text written in active voice always lets us know who is responsible for performing an action. The person or thing who is the actor is the also the subject of the sentence. On the other hand, in passive voice, the object of the action is now the subject of a sentence. While some linguists believe that passive voice is one of the biggest problems in legal text, passive voice may be preferred in many situations. This article examines passive voice from the point of view of its formation, with careful look at the verbs that allow formation of passive voice.

2. FORMATION OF THE PASSIVE VOICE

The English passive voice can be created using a helping verb, specifically be, and sometimes get or become in combination with the past participle of a main verb. The passive voice construction follows the pattern helping verb + past participle. When it comes to helping verbs in passive voice, get is the second most frequently used helping verb after be, but its application is “normally restricted to constructions without an expressed animate agent”, for example:

The boy got given a violin by his father. (Quirk et al. 1974: 802)

It is suggested that the passive voice with helping verb get is avoided in formal style. On the other hand, it is commonly used as a resulting copula, when it is equivalent to become which is used to “express gradual change, often enhanced by modification with more and more, increasingly, etc.” (Quirk et al. 1974: 803).

Biber et al. (1999: 477) argue that the passive voice with helping verb get is “a recent innovation in English and is [therefore] found almost exclusively in dialog in fiction”.

In the sentence:

Ted was helped by Tom the participant Ted or generally the subject of the passive voice is typically called the patient since it is associated with a passive voice role. On the other hand, the participant Tom is normally called the agent as it is associated with the active role. However, in clauses which do not express an action, the roles in question are sometimes called by more relevant names of experiencer and stimulus, e.g. The premier was hated by most members of the cabinet (Huddleston and Pullum 2002: 1427).

Besides, Huddleston and Pullum (2002: 1428) refer to the agent as to an internalised complement, as they do not want to confuse the term with the name of a semantic role. In the active role, Tom is the subject and therefore external to the verb phrase, but in the passive voice it is internal to the verb phrase (Huddleston and Pullum 2002: 1428).

Tom helped Ted (active) and Ted was helped by Tom (passive voice) means essentially the same thing, and yet they are not in every respect synonymous, and it is therefore not superfluous for a language to have both turns. Leech suggests that “an active sentence has a different meaning from its passive voice equivalent, although in conceptual content they seem to be the same” (Leech 1981: 19). Such clauses (as the ones mentioned above) are alike as far as the type of process and the participant roles are concerned: the difference has to do with such matters as information focus (Halliday: 1967). Leech treats them with respect to the background of thematization or “the process of organizing the elements of the message so that weight and emphasis fall in appropriate place” (Leech 1981: 195). The thematic meaning of an utterance is “communicated by the way in which a [...] writer organizes the message, in terms of ordering, focus, and emphasis.” (Leech 1981: 19) The clauses are different because of thematic or discourse organization. The thematic dimension involves such matters as foregrounding or emphasis, distinction between given and new information etc., which typically affect the order of elements in the sentence and the intonation and rhythm. Leech says that the semantic difference between an active sentence and its passive voice transformation can be seen in the layers of different types of meanings. For example,

- (i) Mrs. Smith donated the prize.
- (ii) The prize was donated by Mrs. Smith.

It is clear these two sentences have different communicative values and have different contexts: in (i) we know who Mrs. Smith is and the issue in focus is the fact of donation of the prize; thus we can ask “What did Mrs. Smith donate?” In (ii) the focus of our attention is shifted to the agent who is unknown to us, thus we can ask “Who donated the prize?”, which suggests that the fact of a donation of the prize by someone is known to us, possibly from the context or from a previous mention (Leech 1981: 19). Leech adds that the change of an overall meaning (communicative value) of an utterance caused by a change of the thematic meaning is expected in each active -> passive voice alteration.

This elementary scheme of the formation of the passive voice is often prolonged by an agentive phrase added to the elemental structure be + past participle. Leech mentions the transformational rule that functions on syntactic structures with their associated semantic content as follows (Leech 1981: 196):

Passive voice rule: ...Sa VP [active] (...) Ob ... → ...Sb VP [passive voice] (...) (Adverbial Phrase) provides a “device of linear organization on the syntactic level” (Leech 1981: 196) and its function is to “assign different thematic meanings to sentences which convey the same conceptual meaning”. (Leech 1981: 197)

Huddleston differentiates two subject functions and refers to them as the pre-passive voice subject and the concord subject. The first “is defined on the phrase-markers which represent the structure of the sentence immediately before the passive voice rule applies” (Huddleston 1971: 62). The concord subject can also be called post-passive voice subject. This latter type corresponds to the traditional notion of grammatical subject.

3. VERBS THAT CAN FORM PASSIVE VOICE

The elementary category in verb genus is the active voice. It can be formed in all verbs and has broader range of meanings than the passive voice. The passive voice can be formed from verbs that have an object, though even these verbs do not form the passive voice in some cases which I will discuss later. In the simplest cases the relation between the structures at the pre- and post- passive voice levels is exemplified in:

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- (i) a- Ted killed Tim b- Tim was killed by Ted
 (ii) a- Ted died b- ...was died by Ted

Passivization cannot happen in intransitives and so there will be no difference in structure at the two levels (Huddleston 1971: 93). With transitives, passivization is an option; if it is applied the pre-passive voice subject and the direct object become adjunct (with by as the governing preposition) [2] and subject respectively at the post-passive voice, or concord, level, and be + en is introduced into the helping.

Active transitives with no passive voice counterpart

In the first place there are transitive actives with no acceptable passive voice equivalent (Huddleston 1971: 93). In some cases, there may be a quite general explanation for the absence of a passive voice. Passivization does not normally take place where:

a) pre-passive voice subject and object are identical – i.e. we do not normally find reflexive agents: Ted knew himself to be in the wrong but Ted was known by himself to be in the wrong. “This constraint does not hold if there is contrastive stress on the reflexive agent: cf. Halliday’s (1968: 189) he was supervised by himself with himself as agent (we are not of course concerned with the on his own interpretation)” (cited in Huddleston 1971: 94).

The same principle applies where:

b) the pre-passive voice object contains a possessive determiner that is coreferential with the subject: Mary’s briefcase was lost by her (i.e. Mary) is unacceptable if there is not contrastive stress on her – and indeed rather marginal even if there is. Similarly, inherently reciprocal verbs, so-called equative verbs, do not normally allow passivization (Quirk et al. 1974: 803). Thus house is meant by maison or nine is the same as three squared are ungrammatical whereas that isn’t what was meant and the world record was the same as by Smith, with unequal meanings of the same verbs, are perfectly normal (Huddleston 1971: 94). However, the acceptability of passive voices with symmetric verbs seems to be subject to some degree of dialectical variation (Huddleston 1971: 94).

c) statal verbs like in Mary hated / liked / loved / wanted Ted to play the piano hardly allow passivization with Ted as concord subject – in contrast to similar clauses containing expect, intend, request, require and so on (Huddleston 1971: 94).

d) the verb have is considered an exception that blocks the passive voice rule, although its meaning to possess is necessarily active and the verb possess itself can occur in the passive voice. The constraint is absolute only for one of the two main uses of have, for we can attest passive voices like dinner can be had at any reasonable time, the last word was had by Mary. The two uses I have in mind are distinguished by whether or not the helping do is required in the interrogative, negative, etc. It is the use where do is required that allows passivization – compare at what time do you have dinner... at what time have your dinner... at what time can dinner be had... versus how much money does Ted have... how much money has Ted... how much money is had by Ted... (Huddleston 1971: 94-5).

4. CONCLUSION

To conclude, the passive voice is an integral part of legal language, perhaps more so than the language generally used in everyday life. Passive voice, though it may appear too formal and even unnecessary to some of its critics, has a major role in establishing the form and tone of legal written and spoken text. As discussed before, passive voice is in principle formed from transitive verbs, if an object is a part of the verbal action in such a way that the action shifts in its direction or which is affected by the action. It is simply a switch in the roles between the subject and object of an action, to express the passive relationship in slightly simplistic terms. As seen above, however, the role of the passive voice in legal and other types of language is not simple in its formation, nor in its function. Passive voice constructions most definitely require to be studied in great detail.

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