

Functions of legal contracts. An analysis of macrostructure and speech acts in contracts represented by the example of German tenancy contracts

Aase Voldgaard Larsen, Aalborg University

Abstract: In this paper, the realization of fundamental functions of legal contracts is studied. To this purpose, the macrostructure of the contract (Gläser 1990) is analyzed, and the text part segments that occur in contracts are mapped and described, focusing on the speech acts that are being performed. The corpus of the survey consists of 23 German tenancy contracts, of which some form part of the mapping and some are selected for further exemplary analysis. Genre analysis is the point of departure of this study to look further into the functional element, using the notions of macrostructure and speech acts. A contract text fundamentally realizes two overall functions; firstly, it creates a legal relationship between the contract parties, and secondly, it establishes the rights and obligations of the two parties. Realizations of the latter function by far takes up the greatest part of the contract text, and the contract often provides answers to a lot of questions about what the parties can, must and must not do, as the norms of the contract process itself are established. The contract texts, used in practice, are usually very extensive when it comes to legal provisions, but in fact only very few text part segments are obligatory and genre constitutive, while most of the text part segments are optional. The investigation seeks to categorize the text part segments and show their individual contribution to the fulfillment of the overall functional complex of the contract. More precisely, the paper seeks to investigate which text part segments are obligatory and which are optional, which lexical features are characteristic in each of the text part segments as well as to what extent variations occur.

Keywords: Legal agreements, macrostructure, speech act, text function, genre analysis, legal language.

1. Introduction

For many years, written contracts have constituted the basis on which parties build their legal relationships. Formulating a contract and signing it gives the parties the format and the rules for their legal relationship. This is beneficial for both parties as it reduces uncertainty, and it makes it clear for the parties, which obligations and rights derive from the legal relationship. Contracts lean on the provisions of the law to a large degree (Busse 1992). There is, however, also a large margin for the parties themselves to decide the content of their specific contract. Through the years, contracts have evolved extensively, and conventions have emerged, stating what is usually found in a contract (Hoffmann 1998). Each day thousands of contracts are signed, and in many cases one party signs several almost identical contracts with different counterparts, for example if you are the property owner renting out apartments in an additional house you own. In order for the parties to not have to negotiate and formulate each contract individually for each legal relationship, standard contracts can be found, e.g., on the internet, and filled in. Standard form contracts use “expressions that have been used before and have proven efficient” (Engberg & Pellón 2011: 60; cf. Anesa 2007), and they are “agreements that employ standardized, non-negotiated provisions, usually in pre-printed forms” which reduces transaction costs and makes transactions easier (Designing Buildings Wiki 2020).

In this study, we investigate the macrostructure of contract texts and the functions that legal contracts fulfill, represented by the example of German standard tenancy contracts. Tenancy contracts are used extensively in society, and most people meet them once or several times in their life when they rent a dwelling. In Germany, for example, several private companies and organizations have issued different standard tenancy contracts for housing that people can use free of charge or for a fee. There are several tenancy contracts for business rooms in Germany, too. In Denmark, on the other hand, there is only one authorized tenancy contract for housing in use, issued by the relevant Danish

Ministry, but there are several tenancy contracts for renting business rooms.

In this paper, we are interested in investigating how the structure of legal contracts is and which functions the contracts fulfill. It is a well-known fact that contracts contain obligations and rights of the contract parties (Engberg & Pellón 2011). Nevertheless, not all text parts deal with obligations and rights (i.e., the subfunctions permission, obligation, and prohibition), also other subfunctions such as definitions and the enacting function exist in the text as stated by Blom & Trosborg (1992). Therefore, a contract also fulfills other functions than to lay down obligations and rights, and it is interesting to investigate the relation between the functions of the contract. Another interesting question is which text parts are necessary for a contract in order for it to *be* a contract, for example if it is necessary for the text to contain all party obligations and rights. Based on the knowledge of which fundamental functions legal contracts fulfill, this study, therefore, addresses the following questions:

1. To what extent do variations in the themes and text part segments in standard contracts occur, i.e., which text part segments are obligatory, and which are optional?
2. Which role does party obligations and rights play in contracts?
3. Which lexical features are characteristic in the specific text part segments of contracts?

We will take genre analysis as our frame or point of departure and use macrostructure and speech acts as the focal points for the investigation. Furthermore, we will discuss the meaningfulness of the notions of macrostructure, speech act and text part segment in connection with functions with German legal tenancy contracts as an example.

2. Genre as a point of departure

Contracts constitute a genre of texts (Engberg & Pellón 2011). We can define a genre as a group of texts used in approximately the same kinds of situations, performing approximately the same functions, and making use of approximately the same linguistic means (Lux 1981; Engberg 1993). In this study, we concentrate primarily on one part of this definition, namely the functions of texts of a particular genre. Genre studies have played a significant role in text linguistics since the 1980s, making the study of patterns in professional language and professional communication in use possible (e.g., Lux 1981; Gunnarsson 1982), and were especially predominant in the 1990s in several fields of language (e.g., in the lines of Swales 1990 and Bhatia 1993). In the years after 2010, genre studies have sought to develop a critical perspective, as described in Bhatia (2015), renewing the field with the notion “Critical Genre Analysis” (CGA). The focal point nowadays is to study genres, and not only to describe and explain language use, but also to “account for professional practices in an attempt to investigate why and how professionals create, disseminate and consume specialized knowledge and exploit available semiotic resources and modes of communication to achieve their professional goals” (Bhatia 2015: 18). The purpose of this study is to account for professional practices as well as textual conventions and (ir)regularities in the functions of contract texts that help professionals achieve their professional goals through the texts. ‘Critical’ “reflects an attempt to be as objective as possible, rigorous in analytical procedures, integrating genre analysis and other relevant [...] dimensions of professional genres” (Bhatia 2015: 18 referring to Bhatia 2004). In this interpretation of ‘critical’ the aim is to “demystify, understand, explain and account for the kinds of professional practices in which we are engaged in our everyday life” (Bhatia 2015: 12). Focus is on linguistic (text-internal and intertextual) factors and contextual (text-external) factors that contribute to the analysis as well, e.g., genre conventions (Bhatia 2015: 16). The text-external factors can be characterized as professional practice and professional culture. The purpose of professional practice is achieving specific goals (pragmatic success) in the professional community (professional culture) (cf. Bhatia 2015: 10, 18). The study realizes this in accordance with Bhatia (2015: 14) through

“rigorous analysis of texts in contexts” and focusing on the discursive performance of professionals, i.e., how most professionals construct texts and why they do it in this specific way.

3. Macrostructure and speech act

The purpose of working with macrostructures is to investigate the framework of texts within a particular group of texts, in this case to identify regularities in the thematic structure of contracts. Macrostructure can be defined as a conventionalized text flowchart that is used for the mental and linguistic development of a subject-related theme, and it consists of a hierarchical – but within a certain range flexible – order of text elements that are invariable as to content and function, and that constitutes the structural framework in a specialized text genre Gläser (1990: 55). This definition is used by, for example, Göpferich (1995) and Koskela & Pilke (2002).

Along these lines, Baumann (1992: 82) defines macrostructure as a linear sequentially arranged and hierarchically organized functional system of connections between the text parts and elements. This definition, like Gläser’s definition, incorporates essential features, namely the functional aspect, the hierarchy aspect, and the sequence aspect. Swales’ (1990) notion of “move-structure” corresponds to “macrostructure” in the sense of the word used in this paper, where each “move” serves a particular communicative purpose that is subordinate to the overall communicative purpose of the genre (perhaps more correct: genre text) (Nielsen et al. 1997). This concept does not correspond to van Dijk’s (1978) more general concept of macrostructure. Van Dijk (1978: 45) defines macrostructure quite differently, distinguishing between superstructure and macrostructure, and seeing macrostructure as an abstract representation of the global meaning structure of a text.

The macrostructure consists of a number of text part segments (Gläser 1990)¹, and these text part segments realize different speech acts. Gläser (1990) defines the concept of text part segment in accordance with Langer (1986: 15), as a relatively completed, functional and thematic coherent text-constitutive unit, which in itself has a communicative function and thereby contributes to the realization of the overall text function. Text part segments are separated and structured hierarchically and can be formally marked using typographical means, e.g., paragraphs and headings (Gläser 1990: 56). In some cases, they are identical to paragraphs, but not always; in some cases, the text part segment may consist of one or more sentences, or in rare cases of just one elliptical sentence.

The communicative function of the text part segment is to realize a speech act. Engberg (1997) distinguishes two fundamentally different approaches to the speech act concept. The first approach focuses on the pragmatic conditions that must be met for the language process to succeed, whereas the content-formal characteristics of the linguistic means play an unimportant role for the analysis. This speech act theory is based on the view that the speech act significance of an expression is conventionally-systematically determined, which implies that the sender, encoding the message, gives to the expression a certain speech act value; a value that the recipient of the message simply decodes. Searle (1969) and Hjort-Pedersen (1994) are examples of this kind of language work.

The other approach to speech act theory focuses on both the pragmatic framework and the language resources used, that is, in this type of approach the linguistic design of a message is a criterion of equal importance for the analysis, next to the pragmatic framework. In this type, the speech act meaning occurs not through the encoding process, but through the decoding of the message, performed by the recipient. This means that every text obtains its speech act meaning only in a context, i.e., in an actual situation, and that the recipient adds the meaning to the expression (Engberg 1997). Engberg (1997) mentions Burkhardt (1986), and Busse (1992), as well as Engberg (1997), as examples of speech act work within the framework of this tradition. Felder (2017) and Keding (2016) are other examples.

¹ Gläser (1990) uses the German term “Teiltexthe”. The translation into the term “text part segment” is based on Gnutzmann & Oldenburg (1991).

We use the latter type of speech act approach (Engberg 1997) in this paper. This means that the linguistic resources of the speech act are important for the analysis, as is the pragmatic framework. The fact that the text receives its initial speech act meaning when it is decoded by the recipient, does not play any significant role in the tenancy contract's direct communication situation, where the tenant and the landlord agree on the contract. Both communication partners thereby act as sender *and* as recipient of the message, i.e., both parties encode and decode the text. In some cases, though, it would be problematic to argue that both parties encode and decode the text at the same time, at least in a situation where one of the parties has formulated the terms of the contract in advance, and also since both parties do not necessarily sign the contract at the same time. Nevertheless, in principle, the direct communication parties are both sender and recipient of the message as stated in Larsen (2009) in connection with the communication situation. In the context of the indirect communication situation, however, the determination of when the attribution of speech act meaning takes place plays a certain role. In this indirect communication situation, the recipient, i.e., the judge, is ultimately the person who attributes meaning to the text, written originally by a lawyer, as a realization of a particular speech act (see Busse 1992).

To determine the specific speech act in a specific situation, the speech act signals that appear in the text are important. Speech act signals consist of a number of linguistic elements. These elements have special content-formal characteristics that the sender uses to signal that they wish a text part segment to be understood as realizing a particular type of speech act. These linguistic elements may be, for example, headings and formula-like text part segment initiations, modality, and adverbs with special semantic features (Engberg 1997: 85).

4. Text corpus and method of analysis

The corpus analyzed for this paper consists of 23 German tenancy contracts. The contracts are standard contracts, that is, contracts meant for use on several occasions with different parties involved, as described above. Individually conceived contracts are not included in this study, i.e., contracts, which two parties formulate specifically for the use in one particular situation only. The reason for this selection is the purpose of the study, which is to gain knowledge of the overall (macro)structure and the typical speech acts of contracts as well as the typical realization of the speech acts in tenancy contracts and the relations of the text parts. A group of 11 is constituted by tenancy contracts dealing with the rent of dwellings; and another group of 12 is constituted by tenancy contracts used for commercial rent when businesspersons rent rooms for their business. They were made available by lawyers, property owners (landlords), tenants, tenant organizations and landlord organizations in Germany in the period 1997 to 2017. In most cases they are free of charge, for example the contracts uploaded by German property owners for their tenants, or from a large German tenants' organization (Deutscher Mieterbund); in other cases, a small payment is charged, e.g., for the contract from a property owners' association in Berlin.

The agreements were collected from different sources, for example, they were made available by individuals residing in Germany, or they were randomly selected using the keyword "Mietvertrag" (tenancy contract) combined with "Wohnung" (dwelling) and "Geschäftsraum" (business room) in a search with the internet search engine Google Chrome. The search results from the internet were filtered manually, selecting the highest ranked search results displaying standard contracts. Each contract has been provided with an identification code, marking their use for dwellings (D) or business room (B) and their number in the corpus, in order to enable easy referencing in the presentation of the results of the analysis.

The agreements were divided into text part segments, and these segments were categorized by their content and their necessity in the contract text in order to establish a framework of obligatory and optional text part segments. The segments were coded manually providing each of them with a theme label, a number, content information, and a speech act label based on the communicative

function each text part segment realizes in the agreement, showing the text flowchart of each contract.

The analysis was carried out by a concrete examination of the nature of the content in the text elements in each corpus text and of the frequency with which the individual elements occur in the contracts taken together. On this basis, the text part segments and speech acts formed by the text elements were subsequently determined. As a criterion of division, we have chosen articles because these units can be said to individually contain more or less completed topics and to realize a speech act. Furthermore, they are usually declared by a linguistic speech act signal, in this case by means of headings (see also Engberg 1997: 85-86). Hoffmann (1998: 536) similarly argues for a macrostructure based on the article distribution. Brinker (1985: 18) and other text linguists also rely on typographical text division signals as criteria for division, and the article division is perceived as an important delimitation signal for text part segments in law-texts as stated in Busse (1992: 43). Mináriková (2006) takes the division a step further by using the section of a law as basic text entity, calling the law section itself a text because it constitutes a linguistic and semantic entity (2006: 40). See also the discussion about delineating texts as units in Busse (1992: 41-72). It does not seem appropriate, however, to perceive each article of the contract as an independent text, as Mináriková (2006) does it with sections of the law. The reason is primarily that the contract, as a whole, is signed to the end of the document (not each article separately), and thus as a whole receives validity and truth-value.

In the first part of the analysis chapter, we find a typical overall macrostructure or text flowchart that is seen in the contracts in the corpus analyzed; in the second part of the chapter, we find an exemplary thick analysis of two selected contracts from the corpus.

The typical macrostructure chart, as suggested here, is the result of an analysis of all 23 contracts in the corpus, and it is an abstraction of the text flowcharts found in the individual, analyzed corpus texts. In this connection, we describe the content and structure of the individual text part segments, as well as the individual speech acts realized through each of the text part segments (cf. Göpferich 1995: 218).

The purpose of this macrostructure analysis is, on the one hand, to acquire further knowledge on the contract as a genre, and on the other hand, *inter alia*, to determine which features of the contract are genre constitutive – i.e., necessary for the contract to be a contract – and which are optional.

5. The macrostructure and speech acts of tenancy contracts

The typical division of the corpus contracts into text part segments, showing the macrostructure, is indicated in the table below. This table shows the theme(s) of each text part segment, their contents and the speech acts they realize, as well as their numbers given by me for clarity. Brackets ([]) indicate the speech acts realized by the text part segment in question. The genre constitutive text part segments are marked as gray rows, and the optional text part segments are marked as white rows.

Table 1: The text part segments of a contract

Text part segment no.	Theme	Content	Speech act
1	Preamble	Text designation, parties, performative formula	[determination of field, parties, and legal relationship]
2	Rental object	Nature of the rental object and the legal relationship	[determination of rental object and legal relationship]
3	Rental period and time frame of the contract	Start date, duration, and end date of the legal relationship	[determination of time frame]
4	Rental amount	Rental amount	[determination of rental amount]
5 to x-2²	Other obligations and rights of the landlord and the tenant	Obligations and rights of the parties	[determination of other obligations and rights of the parties]
x-1	Other conditions	Side agreements, partial invalidity, changes of the contract	[determination of reservations and validity for the contractual wording]
X	End	Place, date, and party signatures	[determination of validity for the contract]

As can be seen, the macrostructure of the agreement typically consists of the following elements: determination of the parties, determination of rental object, rental amount, rental period, and determination of several other obligations and rights as well as the parties' signatures. In the following, each text part segment is described more closely, and the obligatory text part segments as well as the optional text part segments are discussed.

A frequent criterion in genre linguistics for deciding whether a text part segment is obligatory or optional is a statistical one, but in this paper a pragmatic approach is chosen, in which legal criteria are in focus. In this case, text part segments that are necessary for the contract to be valid as a contract

² The category "5 to x-2" indicates the large variation in the number of text part segments in the agreements. This category includes text part segments number 5, 6, 7, ... up to the third last text part segment. The category "x-1" means the second last text part segment, and "x" means the last text part segment.

are considered obligatory. This should be seen in connection with the principles of CGA as mentioned above. In CGA, the text-external factors relating to professional practice and professional culture are central, as the purpose of professional practice is to achieve specific goals in the professional setting (cf. Bhatia 2015: 10, 18). In this case the goal is that the contract text is recognized as a contract and is legally binding. The denominations of the different speech acts connected to the text part segments are established inductively based on a discussion of each segment type in 5.3.

5.1. The obligatory text part segments

The obligatory text part segments of tenancy contracts (also known as rental agreement) are preamble, rental object of the agreement, rental amount and parties' signatures. The preamble is the first text part segment in all texts in this corpus, and the rental object of the agreement is handled as the second text part segment in all corpus texts. The rental amount is in the corpus the theme of the fourth text part segment in most of the contract texts, and finally, the parties' signatures make up the last text part segment in all corpus texts.

These elements are genre constitutive units, which means that these are features that are necessary for a given collection of words to be said to be a text belonging to the tenancy contract genre. If one or more of these elements are not present, the text is not valid as a tenancy agreement; if, for example, the signatures are missing, the text might be an agreement draft, but it is not a valid agreement.

In principle, a written contract as such requires only three elements, namely the determination of the parties, the grant of a right or obligation and the parties' signatures. An example of this can be seen in unilaterally binding contracts such as the German "Schenkungsvertrag" (gift agreement), in which one party promises to give a gift to the other party (JuraForum.de 2021a). We find another constellation of the obligatory features in contracts that are mutually binding. Here, the obligatory text part segments are the determination of the parties and two obligations (and rights) as well as the parties' signatures. This can be seen, for example, in sales agreements in the ordinary course of business in which one party, upon the conclusion of the agreement, is obliged to deliver goods, and the other party is obliged to pay an amount of money for the goods (JuraForum.de 2020; Sale of Goods Act 1979). In the case of renting, according to German law, it is required that the tenancy agreement includes the determination of the parties, the determination of rental object and rent amount (Schachner et al. 1995: 636; Ormanschick 2020: § 535) as well as signatures. All other features that an agreement may contain are, in fact, not necessary for the establishment of a contractual relationship and the fundamental existence of the relationship, as the German civil law "Bürgerliches Gesetzbuch" can provide information on all other issues (Schachner et al. 1995: 636). This supplementary information may, however, be highly appropriate and valuable in the contractual text because it serves practical, legal, or other purposes, and makes it easier for the parties to know what they are permitted and not permitted to do in their relation. Oral agreements and wordless agreements also exist, for example, when you take a newspaper in a kiosk, put some coins on the counter, and leave the kiosk without saying a word. However, in this context, we deal only with written agreements since agreements that parties make orally or without the use of words are outside the scope of this paper.

5.2. The optional text part segments

As already mentioned, the macrostructure of the tenancy agreement will, in most cases, also consist of several other elements in addition to the genre constitutive features, namely a textual title (heading), a determination of the rental period and place(s) and date(s) in connection with the parties' signatures. In addition, there will often be a number of other rights and obligations, and this part can be extensively elaborated. This elaboration takes place in special articles, which are separated from each other, for example by paragraph, the use of article marks as well as numbers (e.g., Art. 7 or § 7)

or numbers alone. Subdivisions also occur by using different types of numbers, for example Roman and Arabic numerals, and/or letters. If there is no agreement at all or the agreement does not make any statements on a particular subject, such as payment for repairs, the provisions of the law apply to the subject (Schachner et al. 1995: 636; Deutscher Mieterbund.de 2021).

The optional, that is, non-obligatory text part segments include, for example, the timeframe of the contract, i.e., the rental period (usually the third text part segment), and the other obligations and rights that the parties have in relation to each other (usually from the fifth text part segment) and finally additional conditions (usually the penultimate text part segment). There is a relatively large variation in the text part segments found in the individual agreements in the corpus, and thus the speech acts that are realized in the various contracts. We mark this variation by using the relatively abstract categorization of the text part segment “5 to x-2”. This marking indicates that, under this heading number, there is a great variety of text part segments with different content. These include the rights and obligations of landlords and tenants in multiple areas, such as maintenance and modernization, use of the rental object, permission to sublet, set-off of payment, supply of heating and hot water, access to the rental object, security deposit, placement of television antennas, repairs, and advertising. These text part segments naturally form the largest part of the contractual text.

5.3. Discussion of each text part segment

Each text part segment or group of text part segments is discussed in more detail below to provide a better understanding of their content and the linguistic realization of key contents in each text part segment.

5.3.1. Text part segment 1: preamble [determination of field, parties, and legal relationship]

Text part segment 1 can be perceived as a preamble, and it typically consists, firstly, of a text designation, i.e., a statement indicating that the present text is intended to be construed as a contractual text with the corresponding attributions of meaning to the following text parts. Hereby, the remaining part of the text becomes legally binding for the parties when they sign the contractual text. In addition, the heading indicates the subject area of the contract, in this case tenancy or rent, for example, “Mietvertrag für Gewerberäume” (B 08) (rental agreement for business rooms), “Wohnungs-Mietvertrag” (D 06) (rental agreement for dwelling) or simply “Mietvertrag” (D 03, B 12) (rental agreement). In this way, the text does not only clarify that the agreement is intended to be understood as a contractual text, but as a contractual text within a specific subject area, namely rent. As the agreement is provided with a heading indicating its subject area, often even the exact subject area (e.g., business rooms or dwelling), it is immediately placed within the given jurisdiction area, indicating that the following text must be interpreted in accordance with a certain, already existing frame of legislation and case law, etc. (cf. Busse 1992: 214). Accordingly, specific content and specific consequences, based on this legal framework, are attributed to the contractual relationship itself (cf. Klinge 1996), as the legal provisions for renting are different, depending upon the type of use for the rented object; dwelling or other purposes (Juraforum.de 2021b).

Subsequently, in text part segment 1, we find an indication of the two parties to the contract, stating the first and last name and address of each party, as well as attribution of part descriptions. Examples of this are “als Vermieter” (B 10) (as landlord) or “im Folgenden Mieter genannt” (B 12) (in the following called tenant). The parties are, as a rule, listed with the landlord first and the tenant in second place. However, in some cases there may be more than two parties to a contract. In tenancy agreements, for example, there may be more than one person especially on the tenant side when several persons are sharing a dwelling. As the parties are assigned abstract role names as “landlord” and “tenant”, a wide range of attributes, interests, obligations, and rights are attributed to them. Thus, they are no longer the individuals *Herr Müller* and *Frau Schulze*, but parties in a contractual relationship with rights and obligations that are already described in the law, prior court decisions as

well as in other sources in the legal system, as indicated above.

Finally, in text part segment 1, there is an explicit performative formula (cf. Viehweger & Spies 1987: 89). In the contract, the explicit performative formula consists in indicating that the parties have made the present agreement, for example,

“Zwischen ... als Vermieter und ... als Mieter wird folgender Mietvertrag geschlossen”
(B 10).
(Between ... as landlord and ... as tenant, the following tenancy agreement is made)

With this agreement promise, the parties show that they agree that they have made the agreement. The linguistic element that denotes the agreement is mostly the sentence subject, the parties are indicated as agents, using prepositional compounds, and the form of the verb is present passive. The word “folgender” (“following”) indicates the connection between the performative formula and the rest of the text. With this formulation, the parties assign the following sentences a truth-value of the agreement promise, that is, the parties indicate that they wish the rest of the contractual text to be interpreted as subordinate propositions that inherit their truthfulness from the agreement promise (Klinge 1996: 15-16). The parties thus state that they vouch for the rest of the contract text (see Larsen 2015). The “enacting function”, as it is called by Engberg & Pellón (2011: 60), “instantiates the authoritative framework around the communicative acts performed in and by the contract”. Consequently, the speech act of the text part segment 1 is [determination of subject area, parties, and legal relationship].

5.3.2. Text part segment 2: rental object [determination of rental object and legal relationship]

Text part segment 2 contains an indication of the legal relationship established by the contract, like the previous text part segment. This segment states the subject of the legal relationship that the contract regulates, for example, establishing a rental relationship: The actual legal situation is specified bringing the rental object into focus. The following text is an example of the realization of this, specifying which rooms are rented in which house:

“Vermietet werden in dem Anwesen ... folgende Räume als Geschäftsräume zum Betrieb eines Lebensmittelgeschäftes: 2 Verkaufsräume, 1 Lagerraum, 1 Kellerraum, 1 Küche, 2 Sanitäräume” (B 03)
(In the house...the following rooms are rented as business rooms for the use as a grocery store: 2 sales rooms, 1 storage, 1 basement room, 1 kitchen, 2 sanitation rooms)

The rental object is highly specified, with exact address (indicated in the example above with dots), distribution and number of rooms, etc. Text part segment 1 has already stated the parties and party roles, and they are therefore not necessary here. In this example, the linguistic element denoting the rooms makes up the sentence subject, and the form of the verb is present passive. In other cases, emphasis lies, once again, on the roles of the parties in the legal relationship, for example who rents out what to whom; and the parties are mentioned again along with the exact rooms and address. This takes the linguistic form that the element denoting the landlord is the sentence subject, the element denoting the tenant is expressed as indirect object (in German), the element denoting the rooms is direct object, and the form of the verb is present active, as in the example here:

“Der Vermieter vermietet dem Mieter zu Wohnzwecken folgende im Haus ... gelegenen Räume: ... Zimmer, ... Küche, ... Flur, ... Bad, ... WC, ... Mansarde, ... Speicherabteil, ... Kellerabteil, ... Garten (anteil), ... Balkon, ... Loggia, ... Garage ...” (D 07)

(The landlord rents to the tenant for dwelling the following rooms in the house...:
 ...rooms, ...kitchen, ...hall, ...bathroom, ...WC, ...attic, ...storage room, ...basement
 room, ... garden (part), ...balcony, ...loggia, ...garage)

In this example, the specification of the rental object is necessary as in the example mentioned before this. Subsequently, this text part segment is genre constitutive, and it usually stands as the first item after the preamble. This might serve to strengthen placing the contractual relationship in the legal universe, and furthermore, it clarifies the rental object. By this text part segment, in fact, a completely fundamental obligation for the landlord is realized, namely that the landlord has an obligation to make the rental object available to the tenant and to ensure that the tenant can make use of the rental object (Bürgerliches Gesetzbuch § 535, Abs. 1). However, this obligation might be less explicit in its character than the text part segments 5 to x-2 are. In text part segment 2, we often find a wording that does not explicitly mention the parties, as we saw in the example from B 03, but in other cases, the parties might be repeated, as seen in D 07. The speech act realized in this text part segment is here termed [determination of rental object and legal relationship].

5.3.3. Text part segment 3: time frame [determination of time frame]

Text part segment 3 normally consists of more than one element. The first part is usually relatively short, often only one single sentence, and determines the duration of the contract, meaning its exact starting point, expressed as a date, and, in some cases, the time one of the parties can terminate it, or a fixed termination point. Examples: “Das Mietverhältnis beginnt am:..., es läuft auf unbestimmte Zeit.” (D 06) (the tenancy begins on:... it runs for an indefinite period) or “Der Mietvertrag wird mit einer Laufzeit von einem Jahr beginnend ab dem ... geschlossen.” (B 12) (the tenancy agreement is made with a term of one year starting on ...). Often, we see the linguistic element denoting the tenancy itself as the sentence subject, the time frame(s) is indicated using prepositional compounds, and the verb in present active. The reason for the use of the present tense in agreements goes back to the agreement promise and the performative formula again: It is not necessary to use modal expressions of obligation or right as the parties have agreed that all statements in the agreement must be understood in the light of obligations and rights and as representation of these. In standard contracts, we often find that both rent with time limit and without time limit are stated as options. This can be realized, for example, as follows, in different articles:

“Das Mietverhältnis beginnt am: ...

1. Das Mietverhältnis läuft auf **unbestimmte Zeit** und endet mit Ablauf des Monats, zu dem der Vermieter oder der Mieter die Kündigung unter Einhaltung einer Frist von 3 Monaten ausspricht. ...

2. Das Mietverhältnis läuft auf **bestimmte Zeit** und endet am ..., ohne dass es einer Kündigung bedarf, nur wenn ...“ (D 11 [boldface in original])

(The tenancy begins on:... 1. The tenancy runs for an indefinite period and ends with the conclusion of the month in which the landlord or the tenant gives notice of termination within 3 months. 2. The tenancy runs for a fixed period and ends on..., without the need to give notice, only when...)

If a fixed termination point is not stated along with the starting point, the second part usually contains an indication of the termination of the contract, that is, how and when the legal relation can end. This part often contains the conditions, on which the legal relationship can end, as well as the deadlines the parties must observe. For example, the realization may have the wording shown in the example below, which to a certain extent adopts the wording of the German civil law (Bürgerliches Gesetzbuch § 573c Abs. 1). Again, in the following example, we see the linguistic element denoting

the tenancy itself as the sentence subject, the parties are indicated as agents, using prepositional compounds, but in this case, the modal expression “können” (can) is used in the verb, as the present tense of the verb would give the sentence a wrong meaning, expressing that the termination would happen automatically. Often, we find that the conditions for terminating the contract are not specified in detail, but rather that there is an imprecise reference to “the provisions of the law” as in the last sentence of the following example:

“Es [das Mietverhältnis] kann von jedem Teil spätestens am dritten Werktag eines jeden Kalendermonats für den letzten Tag des übernächsten Kalendermonats gekündigt werden. Nach fünf, acht und zehn Jahren seit der Überlassung des Wohnraums verlängert sich die Kündigungsfrist für den Vermieter um jeweils drei Monate. Im Übrigen richtet sich das Kündigungsrecht des Mieters und des Vermieters nach den gesetzlichen Vorschriften.” (D 07) (it (the tenancy) can be terminated by either part no later than the third working day of each calendar month for the last day of the month after next calendar month. Five, eight and ten years after the rental of the dwelling, the notice period for the landlord is extended by three months. Otherwise, the tenant’s and the landlord’s right of termination is based on the provisions of the law.)

In some cases, however, the normal termination and/or termination without notice are/is stated in separate text part segments, typically later in the contract.

The function of this text part segment is thus to determine the legal relationship in time. Though it is not obligatory, as stated above, it exists in almost all contracts in the corpus, probably for practical and legal reasons. If a period for the duration of the rent, is not included in the contract, the provisions of the law (Bürgerliches Gesetzbuch § 542, Abs. 1) state that the provisions on termination specified in section 573c of Bürgerliches Gesetzbuch apply. If the parties want another notice of termination than the one stipulated in the law, it is crucial that they include this text part segment. Other reasons for including it might be a wish for clarification and unambiguity, as both parties basically are interested in succeeding with their relation enjoying as much benefit and as few problems as possible for both (Klinge 1996). To summarize, the speech act that is realized with text part segment 3 can be named [determination of time frame].

5.3.4. Text part segment 4: rent amount [determination of the rent amount]

The fourth text part segment defines the rent amount. We can see here – like in text part segment 2 – that it states a basic obligation; in this case the obligation for tenants to pay the rent amount (Bürgerliches Gesetzbuch § 535, Abs. 2). The precise amount that is to be paid cannot be derived from the law, which makes this text part segment obligatory, and consequently it is genre constitutive. However, the fact that it is an obligation is often expressed indirectly in this text part segment. One realization of this text part segment, where the obligation is expressed indirectly, is, for example:

“Die Miete beträgt monatlich: Euro, in Worten: ... Euro.” (D 06)
(The monthly rent is: ... Euro, in words: ... Euro.)

This realization only states what the amount of the rent is in present tense, without a modal expression of obligation and without an explicit expression for the person who must pay. Again, from the readers’ knowledge of the nature of renting and the roles of the parties, they know that the tenant must necessarily pay the rent to the landlord. This corresponds, once again, with the agreement promise mentioned above, and makes it possible to state merely the amount of money to be paid. The readers also know who the parties are, as they are evident from text part segment 1. The speech act realized in this text part segment is [determination of the rent amount].

In addition to this realization of the specific rent amount, which is obligatory, we often find other elements in this text part segment, such as determination of the payment of other expenses, e.g., for heating and hot water, and rules for increasing the rental amount. In some cases, there is also in this text part segment a definition of how and when the rental amount is to be paid. However, these elements can also be found separately in other articles, typically in the 5 to x-2 text part segment group, and they are not obligatory for the genre.

5.3.5. Text part segments 5 to x-2: obligations and rights [determination of the parties' obligations and rights]

This group includes a large number of separate text part segments, and there are two reasons for this: Firstly, the content of the individual text part segments is similar to each other in determining a specific obligation and/or right for one of the parties or both parties. Secondly, the number, order, and presence of text part segments in this group are different in each contract so that it would be difficult or impossible to determine regularities.

The text part segments in this group explicitly name the rights and obligations that the parties have agreed to accept in relation to each other, that is, both the rights of the landlord - and hence the obligations of the tenant - and the rights of the tenant - and hence the obligations of the landlord. It could be argued that these text part segments generally perform the same speech act, namely [determination of the parties' rights and obligations]. However, it seems appropriate here to make them different text part segments because they contain different contents. As mentioned earlier, they may include the rights and obligations of landlords and tenants in areas such as maintenance and modernization, the use of the rental object, set-off of payment, supply of heat and hot water, access to the rental object, security deposit, placement of television antennas and repairs.

For the different text part segments, the 'direction' is different, i.e., which party is given an obligation or a right. Thus, there is a significant difference between these text part segments, in relation to the parties; it is, of course, of the utmost importance which of the two parties is given a right or an obligation through the wording. The significance is very clear for the contracting parties themselves, but also for any judicial court that has to decide in case of a dispute between the parties.

In addition to the stated obligations and/or rights, the text part segments may include, for example, the sanctions that may be imposed on the parties if they do not comply with the agreement promise they gave with the explicit performative formula and confirmed with their signature. An example of this could be that, instead of performing the obligations imposed on them by the contract, they perform an unauthorized act or fail to perform an obligatory action. Thus, these text part segments also inform the parties of the circumstances and conditions under which they may be subject to sanction or compensation.

Below, exemplarily a number of realizations of speech acts in different text part segments can be seen; and we note that there are a very large number of realization options for each speech act and each text part segment. In many cases, obligations and rights for both parties relating to a specific theme are expressed in the same text part segment. The linguistic elements denoting the parties are often realized as sentence subjects, and the verbal expression often includes modal expressions of obligation (müssen - must/shall), possibility (können - can), permission (dürfen - may), or prohibition (dürfen nicht - may not). In other cases, we find other direct expressions of obligation (e.g., verpflichtet sein - be obliged), possibility (e.g., Möglichkeit haben - have the possibility), permission (gestattet sein - be permitted), or prohibition (untersagt sein - be prohibited).

In these text part segments, we find many conditional constructions, as seen in 11.1 and 11.2 below: If one party performs a specific act, or if a specific situation occurs, the same party or the other party is permitted or obliged to perform another act. The condition may be expressed through a conditional sentence ("Ist das Mietverhältnis gekündigt..." - If the tenancy is terminated...) or through a prepositional compound ("In Fällen dringender Gefahr..." - In cases of urgent danger...).

Realization of [determination of landlord's and tenant's obligations and rights relating to the landlord's access to the rental object]:

“11.1 Der Vermieter oder sein Beauftragter können die Mieträume nach Ankündigung von einer Woche zur Prüfung des Zustandes betreten. In Fällen dringender Gefahr ist ihm das Betreten der Mieträume jederzeit gestattet.

11.2 Ist das Mietverhältnis gekündigt, so darf der Vermieter oder sein Beauftragter die Mieträume zusammen mit den Interessenten während der Geschäftsstunden des Mieters betreten.” (B 12, § 11)

(11.1 The landlord or his representative can enter the rented rooms after giving one week's notice to check the condition. In cases of urgent danger, he is permitted to enter the rented premises at any time.

11.2 If the tenancy is terminated, the landlord or his representative may enter the rented premises together with the interested parties during the tenant's business hours.)

It is significant that these text part segments set up the agreement's rules for a very large variety of eventualities and all kinds of possible situations, irregularities, and problems. We see this for instance in the extensive realization of the speech act [determination of tenants' obligations and rights relating to placing of firm signs and advertising] in the example below, which is divided into five detailed and comprehensive articles, stating rules for all aspects relating to firm signs and advertising. German nominal style is also used extensively in this part of the agreement, for example in article 1, 3 and 4, where we find numerous nouns, prepositional compounds, participle constructions and genitives.

Realization of [determination of tenants' obligations and rights relating to placing of firm signs and advertising]:

“1. Zur Anbringung von Schildern, Aufschriften und anderen Vorrichtungen zu Reklamezwecken, Rollläden, Blumenkästen sowie zur Aufstellung von Schaukästen und Warenautomaten ist die schriftliche Erlaubnis des Vermieters erforderlich. Der Mieter ist verpflichtet, eine angemessene Vergütung zu zahlen; behördliche Genehmigungen hat der Mieter auf eigene Kosten einzuholen.

2. Die Erlaubnis kann von dem Vermieter jederzeit widerrufen werden, wenn sich für das Gebäude, die Mitbewohner oder die Anlieger Unzuträglichkeiten ergeben, vor allem die Anlagen vernachlässigt werden.

3. Der Mieter haftet für die Schäden, die im Zusammenhang mit Anlagen dieser Art entstehen. Er verpflichtet sich, auf Verlangen des Vermieters bei Beendigung des Mietverhältnisses oder im Falle des Widerrufs der Erlaubnis den früheren Zustand wiederherzustellen. Bei Arbeiten an der Fassade hat der Mieter die Kosten für das Entfernen und Wiederanbringen seiner Schilder zu tragen.

4. Bei Einrichtung von Sammelschildanlagen ist der Mieter verpflichtet, diese zu benutzen und die anteiligen Kosten zu tragen sowie etwaige alte Schilder zu entfernen und dadurch erforderlich werdende Instandsetzungskosten zu tragen.

5. Der Mieter ist berechtigt, Firmen- und Reklameschilder anzubringen und gegebenenfalls zu wechseln.” (B 08, § 9)

(If attaching signs, inscriptions and other devices for advertising purposes, shutters, flower boxes and setting up display cases and vending machines, the landlord's written permission is required. The tenant is obliged to pay an appropriate fee; the tenant must obtain official permits at his own expense.

2. The permit can be revoked by the landlord at any time if the building, the neighbors,

or the residents are inconvenienced, especially if the facilities are neglected.

3. The tenant is liable for any damage that occurs in connection with facilities of this type. He is obliged to restore the previous condition at the request of the landlord upon termination of the tenancy or in the event that the permit is revoked. When work is done on the facade, the tenant must bear the cost of removing and reinstalling his signs.

4. When collective sign facilities are set up, the tenant is obliged to use them and to bear the proportionate costs as well as to remove any old signs and to bear the repair costs that become necessary as a result.

5. The tenant may install and, if necessary, replace company and advertising signs ...)

Furthermore, we find definitions of the extent of the obligations, as in the example of the realization of the speech act [determination of landlord's and tenant's obligations and rights relating to the use and maintenance of a garden] below. Here, the specific duties that are part of the tenant's obligation to maintain the garden are defined, with a high degree of detail to avoid later discrepancies. This includes, for example, how often the tenant has to perform the duties: mowing the lawn twice a month from April to October, pruning hedges, fruit trees and ornamental shrubs once a year, and keeping flower beds and paths free from weeds:

Realization of [determination of landlord's and tenant's obligations and rights relating to the use and maintenance of a garden]:

“Ist dem Mieter ein Garten überlassen, ist er verpflichtet, diesen ständig zu pflegen. Ein Ziergarten ist als solcher zu erhalten. Zur Gartenpflege gehört üblicherweise: Den Rasen in der Zeit von April bis Oktober zweimal monatlich zu mähen, Hecken, Obstbäume und Ziersträucher einmal jährlich zu beschneiden, Blumenbeete und Wege von Unkraut freizuhalten. Kommt der Mieter dieser Verpflichtung trotz Fälligkeit und Fristsetzung nicht unverzüglich nach, kann der Vermieter Schadensersatz verlangen. Der Mieter hat sich die erforderlichen Geräte und Betriebsmittel auf eigene Kosten zu beschaffen.” (D 11, § 19)

(If the tenant is given a garden, he is obliged to maintain it constantly. An ornamental garden is to be preserved as such. Garden maintenance usually includes: mowing the lawn twice a month from April to October, trimming hedges, fruit trees and ornamental shrubs once a year, keeping flower beds and paths free of weeds. If the tenant does not comply with this obligation immediately despite the due date and deadline, the landlord can demand compensation. The tenant must procure the necessary equipment and resources at his own expense.)

These many text part segments usually constitute a very large part of the contractual text and are, as mentioned above, very important for the parties themselves, as they provide the basis for their future actions in connection with the legal relationship. There are extremely large variations in the individual agreements when it comes to these text part segments. Later in this paper, we make an exemplary division of two entire agreements into text part segments to give an impression of the extent of the variations.

5.3.6. Text part segment x-1: other conditions [determination of reservation and validity of contractual wording]

In the agreement, there is usually a text part segment consisting of a number of conditions and reservations concerning the wording of the agreement itself. In this paper, this text part segment has the number x-1 to indicate the place of it in the contract. It is usually the text part segment before the

last text part segment (text part segment x), see below. Typically, it says for example that changes of the wording of the agreement must be made in writing, and that the provisions of the law replace provisions of the agreement that prove to be or become invalid. The realization of this severability provision, in German named “salvatorische Klausel”, can be as follows:

“Änderungen und Ergänzungen dieses Vertrages bedürfen der Schriftform. Dies gilt auch für eine Vereinbarung über die Aufhebung der Schriftform. Sollten einzelne Abschnitte dieses Vertrages unwirksam sein, so wird davon die Wirksamkeit des übrigen Vertrages nicht berührt. Die Parteien verpflichten sich für diesen Fall, eine Regelung zu treffen, die der unwirksamen am nächsten kommt.” (D 10, § 29)

(Changes and additions to this contract must be in writing. This also applies to an agreement on the cancellation of the written form. Should individual articles of this contract be unenforceable, this shall not affect the enforceability of the rest of the contract. In this case, the parties undertake to make a regulation that comes closest to the unenforceable one.)

The speech act of this text part segment can be named [determination of reservations and validity for the contractual wording], and we find one of the same linguistic features as in the other text part segments, i.e., conditional sentences, as different possibly occurring situations are dealt with. Furthermore, we find a special feature, namely the shifting of focus, as the focus in this part is on the agreement itself, making the linguistic elements denoting the agreement, its articles, and changes to the agreement the subjects of several of the sentences. Another special feature is in another part of this text part segment that the linguistic elements denoting the parties jointly are made sentence subjects, indicating that they both agree on their obligation to find another regulation if the one they chose is illegal – stating their joint effort to make the agreement legal and beneficial for both parties.

5.3.7. Text part segment x: end [determination of validity for the contract]

Finally, in text part segment x, there is a closing formula that is usually quite short and consists of place and date as well as the parties’ signatures. This is the fourth of the actual genre constitutive features that a contractual text has, as a contract is not legally valid without signatures. If there are no signatures in the text, the text in question does not belong to the text genre *contracts*, and the text cannot be used as a guide for the parties regarding their obligations and rights in relation to each other, nor can it be used as a basis for an assessment of disputes between the parties. Instead, one could say that the text belongs to the text genre *contractual drafts*. This subject will, however, not be discussed in further detail in this paper.

By means of their signatures, the parties indicate that they acknowledge having entered into the present agreement, that is, that they assign truth-value to the contract’s provisions. As we saw above in the description of the overall function of the contract, it has major and serious consequences for a party, if they, after signing the contract, cause a provision in the contract not to be fulfilled, by failing to perform an action or conducting a prohibited action. In this case, they have not fulfilled their part of the agreement (promise), neglecting the promise that they have given by signing the contract. Thus, the other party can assert their rights with the assistance of the judicial system; a right they have acquired by means of their own signature and the counterpart’s signature. The speech act realized with this text part segment is thus [determination of validity for the contract].

5.4. Exemplary division of two contracts into text part segments

For the purpose of this investigation, two tenancy agreements have been divided into text part segments, showing the distribution of text part segments and the realization of speech acts in these

contracts: a contract between two professionals and a contract between a private person (a nonprofessional) and a professional.

The tables will show more clearly the specific distribution of text part segments, especially the text part segments 5 to x-2. However, it is important to point out that these two contracts are to be seen as examples only, because of the relatively large differences in actual text part segments that exist in the German tenancy agreements in the corpus used for this analysis. The text part segments are numbered individually, which means that specific numbers replace the notions x-2, x-1, and x. The genre constitutive text part segments are marked as gray rows in the table, and the optional text part segments are marked as white rows.

Table 2: Macrostructure of B 08 with the title “Mietvertrag für Gewerberäume”

No.	Speech act [determination of ...]
1	[field, parties, and legal relationship]
2	[rental object and legal relationship]
3	[rental time frame]
4	[rights of the landlord concerning termination without notice]
5	[rental amount and other costs]
6	[payment of the rental amount and other costs]
7	[rights (and obligations) of the tenant concerning setoffs and retention of payment]
8	[obligations (and rights) of the tenant and the landlord concerning heating supply, hot water supply and elevator]
9	[rights of the tenant and the landlord concerning the use of the rental object and sublet of the rental object]
10	[obligations and rights of the tenant concerning attachment of signs]
11	[obligations and rights of the tenant and the landlord concerning installation of external antennas]
12	[rights of the landlord and the tenant concerning animal husbandry]
13	[obligations of the landlord and the tenant concerning the condition of the rental object when the tenant moves in]
14	[obligations of the tenant (and the landlord) concerning maintenance of the rental object]
15	[obligations and rights of the tenant concerning when changing and making installations in the rental object]
16	[rights of the landlord and the obligations (and rights) of the tenant concerning maintenance and modernization of the rental object]
17	[lien of the landlord]

18	[obligations of the tenant concerning house cleaning]
19	[rights of the landlord and the obligations of the tenant concerning the landlord's access to the rental object]
20	[obligations of the tenant concerning the house community order]
21	[obligations of the tenant concerning termination with and without notice and moving out]
22	[obligations of the tenant in case of multiple tenants]
23	[validity of changes in the contract]
24	[other conditions, reservations, and validity for the reads of the contract]
25	[validity for the contract]

Table 3: Macrostructure of D 06 with the title "Wohnungs-Mietvertrag"

No.	Speech act [determination of...]
1	[field, parties, and legal relationship]
2	[rental object and legal relationship]
3	[rental time frame]
4	[rental amount]
5	[distribution and billing of heating and operating costs]
6	[(obligations of the landlord concerning) heating supply and hot water supply]
7	[obligations of the landlord before the tenant's moving in]
8	[obligations (and rights) of the landlord and the tenant concerning defects and damages on the rental object]
9	[obligations (and rights) of the landlord and the tenant concerning maintenance and modernization]
10	[obligations (and rights) of the tenant concerning items installed by the tenant]
11	[rights of the tenant concerning the use of the rental object and sublet of the rental object]
12	[rights of the tenant concerning household machines]
13	[rights of the landlord and the tenant concerning animal husbandry]
14	[obligations and rights of the landlord and the tenant concerning use of garden]
15	[obligations and rights of the landlord and the tenant concerning television and radio reception and installation of antennas]
16	[obligations and rights of the landlord and the tenant concerning the landlord's access to the rental object]

17	[information obligation of the landlord]
18	[obligations and rights of the landlord and the tenant concerning termination]
19	[obligations and rights of the landlord and the tenant concerning termination without notice]
20	[obligations and rights of the of the tenant's next of kin in case of the death of the tenant]
21	[obligations of the tenant when moving out]
22	[rights and obligations of the tenant in case of multiple tenants]
23	[other conditions, house community order]
24	[validity for the contract]

As we can see from the two tables, there are both similarities and differences in the macrostructure of the two contracts. These contracts consist of 24 and 25 text part segments, respectively. In the corpus analyzed for this paper, there are contracts with up to 29 articles (D 10, D 11) and as few as 5 articles (D 01). The first text part segment is a preamble indicating the parties and their roles, the nature of the legal relationship, and the subject matter of the contract, whereas the last text part segment contains date and place of signing as well as parties' signatures, and the penultimate one the "salvatorische Klausel". The remaining 21 and 22 text part segments are numbered articles: the first few of these contain specifications of rental object, rental amount, and rental period, and the rest of the text part segments contain information on the two parties' obligations and rights.

The differences in the content of the text part segments and the related differences in realized speech acts that appear in the contracts seem, to some extent, to go back to the fact that they regulate two different types of tenancy. It is relevant to a contract for tenancy of business rooms to include the determination of for example outdoor signs (text part segment 10 in B 08), while this is not relevant in connection with renting a dwelling. In the case of renting a dwelling, however, it is relevant to determine, for example, what rights a spouse may have on the death of a tenant (text part segment 20 in D 06), and if the tenant can use the garden belonging to the house, and in return maintain the garden (text part segment 14 in D 06). On the other hand, we find a large number of speech acts occurring in both types of contracts as well.

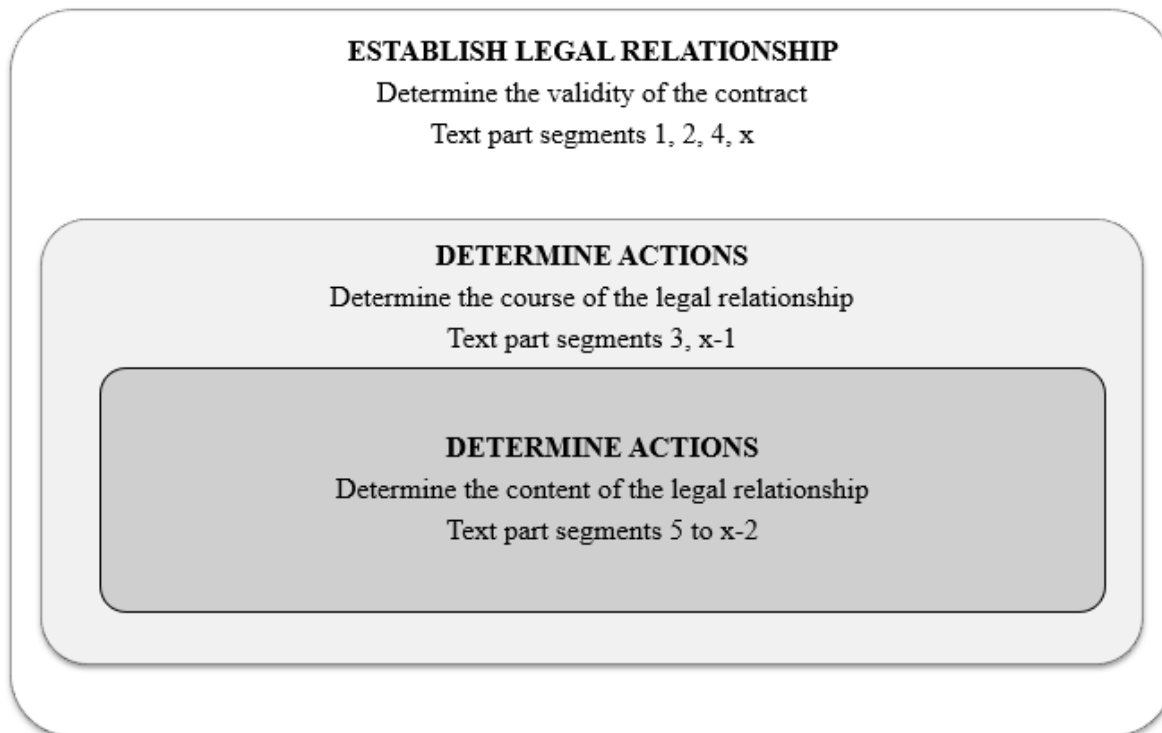
5.5. Realizing of the functions through the text part segments

The overall function of the contract is to ENTER INTO AGREEMENT, and the text part segments can be divided into groups based on a principle that relates to the character of the text part segment. This analysis does not concern the specific legal details in the content of each text part segment. Moreover, the character of the content realized in each of the text part segments is important here, i.e., what kind of content is in the text part segments. The character of the individual text part segment is related to the overall function of the agreement text and its sub-functions, as it realizes certain aspects of the functions. In accordance with this, Viehweger & Spies (1987) argue that different kinds of illocutionary acts define different types of content. However, in the text genre "Anordnung" (i.e., injunction) that they use for analysis, they distinguish between four different types of content or text part segments, namely norms of the legal system, validity, sanctions, and aid norms (1987: 102-103). In this paper, we prefer another distribution of the text part segment types, because it is a different genre with different functions.

We distinguish between three different types of text part segments: Firstly, we have text part segments whose function is the definition of norms for the legal relationship. Secondly, there are text

part segments whose function is the determination of norms for the course of the actual legal relationship. Thirdly, we find the text part segments whose function it is to determine the validity of the contractual text as such. The relationship between the three types of text part segment can be visualized as in the figure below.

Figure 1: The realization of functions through the text part segments.



In figure 1, the group consisting of the core text part segments for the parties is situated in the center; the group of text part segments indicating the legal relationship, in the middle; and finally, the group of frame texts units, at the periphery.

We lean on Gunnarsson (1982, 2009) who distinguishes between different function perspectives of law-texts; a “citizen perspective” and a “court perspective”. A law-text with a citizen perspective is adapted to the “action-directing function” and focuses on “action rules” from a citizen’s point of view, whereas a law-text with a court perspective is adapted to the “control-directing function” and has its focus on “judgment rules” seen from a court’s point of view (Gunnarsson 2009: 108).

Similarly, we can distinguish a “party perspective” and a “court perspective”. The first group of text part segments consists of the text part segments that can be termed “core text part segments” from a “party perspective”. They are probably the text part segments that the parties would call the core of the contract, namely text part segments 5 to x-2, which indicate the parties’ rights and obligations in relation to each other, in other words their “action rules”. As mentioned above, it is by far the most comprehensive group of text part segments, as a very wide range of obligations and rights can be identified here. The purpose of this group is to establish norms for the content of the legal relationship in order for the parties to know what they have agreed on, to have a smooth relationship and for the judiciary system to be able to decide in case of disputes between the parties.

The function of the second group of text part segments is to determine the norms for the course of the actual legal relationship. These are the provisions of the contract that deal with the time frame of the contract and, in some cases, the terms of termination of the contract, as well as the provisions

concerning changes to the contract, partial invalidity, etc.; that is, text part segment 3 and text part segment x-1. In text part segment x-1 we also find a number of conditions and reservations that are taken against the wording of the contract itself. If the contract does not contain a determination of these elements, the text is still categorized as a contract and valid as such. In such cases, instead of the missing information, the provisions of the law, prior court decisions, etc. apply and are used as guidelines.

These two first groups of text part segments thus determine, firstly, circumstances that relate to the parties' actions in relation to each other as they indicate the rights and obligations of the parties. Secondly, they determine circumstances relating to the actual course of the legal relationship, namely the beginning and termination of relationship, which are specified in text part segments 3, 5 to x-2 and x-1. One can thus say that they both relate to the function DETERMINE ACTIONS.

For the third group of text part segments, the function consists of determining the validity of the contractual text as such. This type of text part segments does not deal with the content or the course of the legal relationship itself, but with the requirements the contractual text must fulfill to be valid as a contract and to be able to form the basis of the parties' legal relationship. Text part segments 1, 2, 4 and x relate to this function. In the third group, we find the genre constitutive features of the contract. These text part segments indicate circumstances that are relevant to whether a legal relationship is established between the parties: Here the signatures of the parties can be found as well as the explicit performative formula, which indicates that the parties with their signatures enter into an agreement and wish the given text to be perceived as a contract. In these text part segments, usually text part segments 1 and 2, the type of legal relationship is also given. This information gives the legal expert an idea of the basic content of the contract, at the same time indicating implicitly which legal provisions to apply in case of a legal dispute.

We can say that this last group of text part segments is of great importance to the contract because they determine the validity of the contract. This means that all other text part segments completely lose their validity and significance if the genre constitutive features are missing in a text. This group of text part segments relates to the function ESTABLISH LEGAL RELATIONSHIP. These text part segments thus form the framework for the contractual relationship between the parties. With the distinction of Gunnarsson (2009), this group relates to the "court perspective" and "judgment rules". Of course, it is also possible to say that, especially text part segment 4 also sets out actions, as it contains rules for the payment of the rent, but after all it seems appropriate to place it in this third group because if it were not present, the contract would not be valid as a contract.

Hoffmann (1998) does not assess the significance of the text part segments in relation to each other; because it is difficult to establish a hierarchy in the form of a tree graph of the text part segments of this genre, as opposed to certain other genres, such as operating instructions (Hoffmann 1998: 536). Hoffmann is probably right when noting that a hierarchy in the form of a tree graph is not an optimal solution for this genre, but with another form of visualization, such as the one used in figure 1 in this paper, it may be possible to present a hierarchy of the text part segments.

6. Concluding remarks

In summary, we know that the overall function of the contract is to ENTER INTO AGREEMENT. The text part segments individually realize parts of the two sub-functions of the agreement. Firstly, we have the sub-function to ESTABLISH LEGAL RELATIONSHIP, i.e., to establish the agreement as an agreement, and thereby establish a context. Secondly, the sub-function to DETERMINE ACTIONS is seen, i.e., to describe and determine the rights and obligations of the parties. Each text part segment can mainly be ascribed to one of the two functions. Likewise, each text part segment can be classified into a group that fulfills a special function, namely either the function of establishing norms for the legal relationship, or the function of determining norms for the course of the actual legal relationship or, finally, the function of determining the validity of the contractual text as such.

The individual text part segment is either obligatory because it is genre constitutive and fulfills the sub-function to ESTABLISH LEGAL RELATIONSHIP, or it is optional and fulfills the sub-function to DETERMINE ACTIONS. The obligatory text part segments realize the speech acts [determination of object, parties, and legal relationships], [determination of tenancy and legal relationship], [determination of the amount of rent], and [determination of contract validity]. The optional text part segments realize the speech acts [determination of timeframe], [determination of reservation and validity of the contractual wording], and a large part of the text dealing with determination of the parties' obligations and rights and, so, determining the future actions of the parties. The latter consists of a large number of text part segments that implement different speech acts determining specific rights and obligations, either for one party or for both parties, e.g., [determination of rights of the tenant concerning household machines] and [determination of rights of the landlord and the tenant concerning animal husbandry]. This makes up most of the text by far.

We see that all text part segments concerning rights and obligations fulfil the same basic sub-function DETERMINE ACTIONS, and one might argue that this means that they make up one large text part segment [determination of rights and obligations]. This would, however, not be coherent with the definition of text part segment by Gläser (1990), stating that a text part segment is a relatively completed, functional and thematic coherent unit with a communicative function and that these units are separated and can be formally marked by typographical means, e.g., paragraphs and headings. Even though they do, seen from an overall perspective, deal with the 'same' type of content, namely rights and obligations, placing all separate units in one text part segment would be contradictory on a more specific thematic content level, and would contradict the definitive element of separation and marking by typographical means as well. Furthermore, this would make the use of text part segments less meaningful as we would then deal with only very few text part segments, of which one would comprise almost all the contract, and the amount of information we would then be able to derive from the notions of text part segments and macrostructure would be rather scarce.

Although only few text part segments are legally obligatory in the contracts, a large amount of optional text part segments are found in the specific contracts, mostly related to the obligations and rights of the parties. This is partly due to practical reasons, meaning that this large number of supplementary determinations helps the parties navigate their actual relationship and determine their future actions based on rights and obligations to each other and in connection with their legal relation. While the obligatory text part segments are, of course, found in all contracts, a few optional text part segments are found in all, or almost all contracts, first and foremost [determination of rental time frame] and [determination of payment of rent], primarily dealing with time and method of payment. The presence of these text part segments is not obligatory due to the contract's relation to the law and other legal resources, but they are added for practical reasons in order to prevent misunderstandings and legal disputes between the parties.

Variation occurs, however, to a large extent, and is related to the specific nature of the legal relationship and the thematic elements that (one of) the parties want(s) regulations for. Thus, in contracts concerning commercial rent, the text part segments are to a large extent related to the commercial use of the rented object, and they regulate, e.g., the placement of signs and advertisements. In contracts about renting housing, the text part segments are related to the use of the apartment as a private residence, e.g., the use of garden or household machines. Although some of the text part segments in both contract types are the same, regulating for example animal husbandry and the placement of television antennas.

The reason for this seems to be the legal nature of the relationship more than the fact that it is a contract between two professionals in one case, and a contract between a private person (a nonprofessional) and a professional in the other case. There is no evidence in this corpus that the structure of contracts per se takes the lacking knowledge of the private person into account, for example in the form of specifically added text part segments intended to facilitate the understanding

of the nonprofessional through defining specific legal concepts. Other studies have shown that this, in some cases, is done by adjusting the specific wording of the contract, adding explanations and examples in the text which can make it easier for the nonprofessional to understand (Larsen 2009). This is mostly done as additions to the existing text, and not in separately inserted text part segments.

The text part segments have specific linguistic features. In the first segments, we see a focus on identifying the parties themselves and their party roles, the rental object, and the rental amount. These elements are often stated in grammatical subject position and with a high degree of specification, as they are used for fulfilling the sub-function of ESTABLISHING LEGAL RELATIONSHIP. The use of verbs, however, is restricted to verbs indicating existence or verbs in a passive voice, emphasizing the agreement promise the parties made in the performative formula and confirm with their signatures. In the text part segments fulfilling the sub-function of DETERMINING ACTIONS, we find the formulation of obligations and rights, as well as the sanctions imposed on the parties if they do not fulfil their obligations. The linguistic variety is large in this section, and the linguistic elements denoting the parties are often realized as sentence subjects to make the sentence unambiguous, and the verbal expressions often include modal expressions of obligation, possibility, permission, or prohibition. The thematic specification is, also in this section, very high, but the focus is not so much on the subjects (the parties), but on the details of conditions and circumstances as well as the actions that are obligatory, possible, permitted, or prohibited. In order to offer solutions for all eventualities and thus be all-inclusive (Bhatia & Candlin 2004), the contract also makes extensive use of conditional constructions, shaped as conditional sentences and prepositional compounds.

Finally, it is noteworthy that this analysis demonstrates the applicability of the notions text part segment, macrostructure, and function to gain knowledge of the structure and hierarchy within a text of a certain genre, in this case, tenancy contracts. We can see the same basic structure in tenancy contracts across types of parties and situations. Further research into other types of contracts, for example working contracts and sales contracts, are necessary to establish which kinds of differences in the basic structure of the contracts can be found, especially when it comes to the text part segments concerning the obligations and rights of the parties. It may be assumed, however, that we, to a large degree, may find the same basic structure concerning obligatory text part segments as some obligatory text part segments will also be necessary in other contract types (parties, signatures, and performative formula). In these cases, the obligatory text part segments will, of course, not deal with determining rental objects and rental amounts, but, e.g., sales objects and sales prices. Accordingly, the optional text part segments concerning the specific obligations and rights of the parties can be expected to deal with a variety of aspects of the legal relationship.

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