

More than Verbs: An Introduction to Transitivity in Legal Argument

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Introduction

Legal commentators have long recognized that legal disputes turn as much on the facts as on the law, if not more so. Although questions of fact and law are often interrelated, at the inception of every legal dispute is a description of an event in which one party encroaches or impinges on another through some transfer of action. Only after a harm is established does the question of its legal recognition arise, a principle reflected as early as the ancient Greek and Roman stasis system of legal argumentation that began with questions of factual conjecture.¹ In today's corporate jargon, legal complaints are founded on descriptions of events that are in some way *impactful*.

Because transitive events play a crucial role in legal argument, commentators have often emphasized the importance of verbs in legal discourse. Lawyering manuals often recommend the active voice, in which the subject of the sentence performs the action of the verb, because the active voice attributes responsibility for actions more clearly than the passive voice. For example, Anne

¹ See, e.g., Cicero, *De Inventione* (Harry Mortimer Hubbell trans., Harvard Univ. Press 2000); Ray Nadeau, *Hermogenes' On Stases: A Translation with an Introduction and Notes*, 31 *Speech Monographs* 361–424 (1964); cf. Thomas Wilson, *Wilson's Arte of Rhetorique* 88–94 (George Mair ed., Clarendon Press 1909). Modern commentators have also noted the influence of the classical stasis model on modern legal procedure. See Alessandro Giuliani, *The Influence of Rhetoric on the Law of Evidence and Pleading*, 7 *Jurid. Rev.* 216–51 (1962); Hans Hohmann, *The Dynamics of Stasis: Classical Rhetorical Theory and Modern Legal Argumentation*, 34 *Am. J. Juris.* 171–97 (1989).

Enquist and Laurel Oates argue that the active voice is important because it “emphasizes who or what is responsible for committing an act,”² and Mary Beazley notes that this attribution function is more likely to “intensify the reader’s reaction.”³ As a corollary, Megan McAlpin argues that when we use the passive voice, “we do our clients and ourselves a disservice by failing to assign responsibility.”⁴ Microanalytic studies of verb use in criminal trials have shown that prosecutors and defense counsel recognize this principle in that prosecutors are more likely than defense counsel to position defendants as the subjects of active verbs.⁵

Other lawyering manuals emphasize the stylistic or mnemonic value of verbs, recommending that lawyers use strong, forceful, vivid, distinctive, colorful, or picturesque verbs.⁶ Alan

² Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* 71 (2003).

³ Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* 189 (2d ed. 2006).

⁴ Megan McAlpin, *Writing with Clarity: Finding and Fixing the Passive Voice*, 67 Or. St. B. Bull., July 2007, at 13, 14; cf. Stephen V. Armstrong & Timothy P. Terrell, *Thinking Like a Writer: A Lawyer’s Guide to Effective Writing and Editing* 232 (3d ed. 2009) (noting that the passive voice can lead to ambiguity because “the agent can disappear from the sentence altogether”).

⁵ See Ty Alper et al., *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*, 12 Clinical L. Rev. 1, 131–32 (2005); Anthony G. Amsterdam & Randy Hertz, *An Analysis of Closing Arguments to a Jury*, 37 N.Y. L. Sch. L. Rev. 55, 66–75 (1992).

⁶ See, e.g., Alan L. Dworsky, *The Little Book on Legal Writing* 7–8 (1992); Martha Faulk & Irving Mehler, *The Elements of Legal Writing: A Guide to the Principles of Writing Clear, Concise, and Persuasive Legal Documents* 6 (1994); Michael R. Fontham, *Trial Technique and Evidence* 301 (2d ed. 2002); Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* 225–27, 236 (2d ed. 2003); Ross Guberman, *Point Made: How to Write Like the Nation’s Top Advocates* 156–60 (2011); Gerald Lebovits, *Persuasive Writing for Lawyers — Part I*, N.Y. St. B. Ass’n J. 82, 65 (2010); Terri LeClercq, *Guide to Legal Writing Style* 31 (1995); Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 361–62 (6th ed. 2009); Teresa J. Reid Rambo & Leanne J. Pflaum, *Legal Writing by Design: A Guide to Great Briefs and Memos* 196 (2001); Mary Barnard Ray & Barbara J. Cox,

Dworsky, for example, claims that a sentence in the active voice is “clearer, stronger, and more concise” than one written in the passive voice, which “drains the life” from a sentence.⁷ Bryan Garner recommends using vivid verbs to “evoke a picture in the reader’s mind.”⁸ Mary Ray and Barbara Cox write that verbs communicate action in a way that an audience can imagine and that the active voice “emphasizes the action by making the sentence more interesting and easier to read.”⁹ The passive voice, Terri LeClercq writes, “pulls its punch rather than striking with a strong, forceful verb.”¹⁰ Nonlegal texts offer the same reasoning. In *The Elements of Style*, for example, William Strunk and E.B. White write that “many a tame sentence of description or exposition can be made lively and emphatic by substituting a transitive in the active voice for some . . . perfunctory expression,” which also shortens prose so that “brevity is a by-product of vigor.”¹¹

In contrast to Strunk and White’s specific emphasis on transitive verbs, the emphasis on the active voice in legal discourse often conflates active voice and transitivity by assuming that the active voice involves a transitive verb.¹² This may be so in part because the advice is mostly directed against use of the passive voice and the passive voice is possible only with a transitive verb. The active voice, by contrast, can describe both transitive and intransitive

Beyond the Basics: A Text for Advanced Legal Writing 72, 174 (2d ed. 2001); Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, *Writing and Analysis in the Law* 208 (2003); cf. Richard D. Rieke & Randall K. Stutman, *Communication in Legal Advocacy* 157–59 (1990) (emphasizing the value of vividness and language intensity in trial testimony generally).

⁷ Dworsky, *Little Book on Legal Writing* at 7–8.

⁸ Garner, *Winning Brief* at 236.

⁹ Ray & Cox, *Beyond the Basics* at 72, 174.

¹⁰ LeClercq, *Legal Writing Style* at 31.

¹¹ William Strunk Jr. & E.B. White, *The Elements of Style* 18–19 (3d ed. 1979).

¹² See, e.g., Rambo & Pflaum, *Legal Writing by Design* at 196; Shapo, Walter & Fajans, *Writing and Analysis* at 208.

actions (e.g., because *he walked away* describes an intransitive action, it can be expressed only in the active voice).

The distinction between voice and transitivity is particularly important to legal discourse because transitivity, rather than voice, is the linguistic resource used to describe any transfer of action on which a legal dispute is founded. While transitive verbs have received occasional attention in legal studies — such as studies finding that the difference between accidents and agentive acts turns on the transitivity of verbs¹³ — transitivity includes more than whether a verb takes an object and has received little attention in legal studies. Transitivity is a central property of all language use that functions through a variety of components on the discourse level, not only morphology and syntax but the entire semantic context of a proposition.¹⁴ Because it is the property of language through which we attribute responsibility to agents for the transfer of action essential to any legal complaint, it is especially important for lawyers to understand.

According to linguists, transitivity reflects “the effectiveness with which an action takes place.”¹⁵ Transitivity is not determined solely by verbs or whether verbs take objects — classifying verbs as transitive or intransitive — but includes a variety of interdependent components. It is scalable rather than absolute. Actions are not simply transitive or intransitive, in other words, but are

¹³ See, e.g., John M. Conley & William M. O’Barr, *Just Words: Law, Language, and Power* 109–12 (1998); Caitlin M. Fausey & Lera Boroditsky, *Subtle Linguistic Cues Influence Perceived Blame and Financial Liability*, 17(5) *Psychonomic Bull. & Rev.* 644 *passim* (2010); cf. Neal Feigenson, *Legal Blame: How Jurors Think and Talk About Accidents* 89–95 (2000).

¹⁴ See, e.g., Paul J. Hopper & Sandra A. Thompson, *Transitivity in Grammar and Discourse*, 56 *Language* 251–53 (1980); Åshlid Næss, *Prototypical Transitivity* 77 (2007).

¹⁵ Hopper & Thompson, 56 *Language* at 251.

quantifiable as relatively high or low in transitivity as a result of the combined strength of at least the following components:¹⁶

- (1) *Participants*. Because transitivity reflects a transfer of action from one participant in an event to another, actions with two participants are more transitive than reflexive actions. The action in the sentence *Lin burned his leg* is less transitive than the action in the sentence *Jacinda burned Lin's leg*, even though a verb in the active voice takes a direct object in both sentences.
- (2) *Kinesis*. Actions are more transitive than states of mind or being because states cannot be transferred from one participant to another. In the sentence *Isabelle likes trees*, for example, the verb *likes* is syntactically transitive because it takes the direct object *trees*, but its transitivity is relatively low insofar as liking is a state of mind rather than an action that can be transferred to trees.
- (3) *Aspect*. Because a transfer of action is more apparent when complete, actions presented from the perspective of their endpoint are more transitive than those viewed as being in progress. The action in the sentence *Lucas took \$100 from the register* is therefore more transitive than the action in the sentence *Lucas is taking money from the register*.
- (4) *Punctuality*. Punctual actions are more transitive than those completed over a long or indefinite time. The action in the sentence *He grabbed her laptop* is therefore

¹⁶ See, e.g., William Frawley, *Linguistic Semantics* 211 (1992); Talmy Givón, "Ergative Morphology and Transitivity Gradients in Newari," in *Relational Typology* 89–107 (Frans Plank ed., 1985); Hopper & Thompson, 56 *Language* at 251–53; Gilbert Lazard, *Transitivity Revisited as an Example of a More Strict Approach in Typological Research*, 36 *Folia Linguistica* 141–90 (2003); Næss, *Prototypical Transitivity* at 15.

more transitive than the action in the sentence *He took possession of her laptop*.

- (5) *Volition*. Volitional actions are more transitive than nonvolitional actions. Volition is often indicated by an adverbial such as *deliberately*, *intentionally*, or *purposefully*. More often, however, it is constructed through contextual cues such as evidence of motive or planning, or inheres in the meaning of the verb itself, as is often true of composing verbs such as *wrote* (e.g., *Jack wrote the report*).
- (6) *Affirmation*. Actions that are stated affirmatively are more transitive than those stated negatively. The actions in the sentences *Diana did not steal the bicycle*, *Diana never stole the bicycle*, and *No one stole the bicycle* are all transitive, but the transitivity is lowered by the divergence between the proposition that a bicycle was stolen and reality.
- (7) *Realis*. Actions that are expressed as merely possible, inferred, reported, or otherwise contingent on the speaker's knowledge or belief are less transitive than those depicted as noncontingent. The actions in the sentences *He could have rear-ended her*, *He must have rear-ended her*, and *According to the only eyewitness, he rear-ended her* are all transitive, but their transitivity is lowered by the fact that the actions are expressed as being contingent on the speaker's knowledge or belief.
- (8) *Agency*. Actions attributed to actors with high agentive potency — the capacity to cause an effect on an object — are more transitive than those attributed to actors with low agentive potency. Thus, the action in the sentence *Hanna startled him* is higher than that in the sentences

The incident startled him, The dog startled him, and The rain startled him.

- (9) *Affectedness*. Actions that have a greater effect on their object are more transitive than those that have less effect. The action in the sentence *He destroyed the table* is therefore more transitive than that in the sentence *He scratched the table*. Linguists have also found that the effect of an action on the actor combines with the effect on an object to create transitivity, so that transitivity is higher when the effect on the actor is low relative to the effect on the object.¹⁷
- (10) *Individuation*. Actions are more transitive when their participants are distinct from each other and from their background, because actions are more clearly transferred when participants are separate. Abstract, plural, or mass nouns are less individuated than concrete, singular, or count nouns. Thus, the action in the sentence *Officers James and Orlov broke down Hami Gowon's front door* is more transitive than the action in the sentence *The police broke into the plaintiff's residence*.

Several important observations are immediately apparent from this multifaceted dimension of transitivity. First, many verbs that are syntactically transitive are relatively low in transitivity. The action in the sentence *The plaintiff sees things differently*, for example, is relatively low in transitivity — no transfer of action is apparent — even though the sentence uses the active voice and the verb *sees* takes the direct object *things*. Second, because transitivity is a foregrounding device rather than a property of events themselves, high or low transitivity can be attributed to the same event without contradiction. The decision to attribute

¹⁷ See Næss, *Prototypical Transitivity* at 77.

high or low transitivity to an event is rhetorical. It is more commonly advantageous to attribute high transitivity to others and low transitivity to oneself because transitive verbs attribute responsibility for changing another actor or object, and as Chaïm Perelman and Lucie Olbrechts-Tyteca note, “change . . . has to be justified.”¹⁸ Third, transitivity is formed through a combination of morphology, syntax, and the entire semantic context of a proposition, manifesting itself in nouns, verbs, adjectives, adverbs, participles, and prepositional phrases. And it does not depend on voice. Participants, aspect, and individuation are features of nouns and noun clauses, for example, and punctuality and volition can inhere in the meaning of particular verbs but are often indicated by context. Nominalized verbs, too, can indicate transitivity.

Consider the following passage from the plaintiffs’ brief in *Hatabley v. United States*, in which Navajo Indians attributed high transitivity to the government’s actions in the passive voice as part of a lawsuit seeking recovery for federal agents’ confiscation and destruction of horses grazing on public lands:

The animals were rounded up on the range and were either driven or hauled in trucks to a Government-owned or controlled corral 45 miles away. Horses which could not be so handled were shot and killed by the Government’s agents on the spot. [T]he horses were so jammed together in the trucks that some died as a result, and, in one instance, the leg of a horse that inconveniently protruded through the truck body was sawed off by a federal employee.¹⁹

¹⁸ Chaïm Perelman & Lucie Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* 106 (John Wilkinson & Purcell Weaver trans., Univ. of Notre Dame Press 1969).

¹⁹ Quoted in Neumann, *Legal Reasoning and Legal Writing* at 362 (citations to the record omitted); see also *Hatabley v. United States*, 351 U.S. 173 (1956).

Despite being presented in the passive voice, this description is powerful because of the combination of aspect, punctuality, volition, affirmation, realis, agency, affectedness, and individuation.

For a similarly powerful example in passive participial phrases, consider the Roman orator Cicero's 80 BCE argument in defense of Sextus Roscius of Ameria, who was accused of murdering his father. Cicero used passive participles to attribute high transitivity to the actions of those he accused of committing the murder:

The father atrociously murdered, his house besieged by enemies, his property taken away, seized, and plundered, his son's life endangered, often assailed by treachery and the sword — what kind of crime seems to be missing among so many misdeeds?²⁰

The 1859 murder trial of New York congressman Daniel Sickles offers another example of transitivity in passive participial phrases. Sickles was charged with the murder of Washington, D.C., district attorney Phillip Barton Key, who had an affair with Sickles's wife. After Sickles broke down during the proceedings, Sickles's counsel, James Brady, used passive participles to depict Sickles as Key's victim: "There was he, the avenger of the invaded household, of the more than murdered wife, of the more than orphan little one — there was he, in an appalling moment of parental agony, subdued at last."²¹

This article provides a brief introduction to transitivity and its importance to legal discourse from the perspective of functional linguistics. The article assumes the necessity of multiple participants and actions rather than states as a foundation for transitive

²⁰ Cicero, *The Speech in Defence of Sextus Roscius of Ameria* 149 (John Henry Freese trans., 1930; repr. Loeb Classical Library 2000).

²¹ Quoted in *The Devil's Advocates: Greatest Closing Arguments in Criminal Law* 352 (Michael S. Lief & H. Mitchell Caldwell eds., Scribner 2006).

events. But it separately examines aspect, punctuality, volition, affirmation, realis, agency, affectedness, and individuation as important components of legal argument, illustrating how each is used in legal contexts with examples drawn from legal complaints, trial transcripts, judicial opinions, and lawyering manuals. Understanding transitivity from a functional perspective not only provides legal advocates with the tools to use verbs more precisely, but illustrates how other linguistic resources attribute transitivity and offers unique insights into the structure of legal reasoning.

1. Aspect

Linguists note that an action is more effectively transferred from an actor to a person or object when “viewed from its endpoint.”²² In other words, the action is more transitive if it is presented as real and completed.²³ This perspective is reflected in the property of language known as aspect, specifically perfective aspect as opposed to imperfective aspect, which presents actions without reference to their completion. Aspect conveys different perspectives on the temporal constituency of a situation, or on how an event is distributed through time.²⁴ The perfective aspect depicts an event from an external perspective, as a complete, unanalyzable whole by referencing its beginning, middle, or end, without distinguishing the internal phases or elements of the

²² Hopper & Thompson, 56 *Language* at 252; see also Givón, *Relational Typology* at 89–107; Lazard, 36 *Folia Linguistica* at 141–90; Næss, *Prototypical Transitivity* at 15.

²³ Hopper & Thompson, 56 *Language* at 252; see also Givón, *Relational Typology* at 89–107; Lazard, 36 *Folia Linguistica* at 141–90; Næss, *Prototypical Transitivity* at 15.

²⁴ Bernard Comrie, *Aspect: An Introduction to the Study of Verbal Aspect and Related Problems* 3 (1976); Frawley, *Linguistic Semantics* at 294; Andrew Sherrill et al., *Understanding How Grammatical Aspect Influences Legal Judgment*, 10 *PLoS ONE* 2 (2015).

event (e.g., *she locked the door*). Paul Hopper notes that in the perfective aspect, “the idea of speaker distance from the narrated events is paramount.”²⁵ The imperfective aspect, by contrast, depicts a situation from an internal perspective, as an incomplete, unfolding, or endless process, viewing the situation from within. It includes depictions of situations as habitual (e.g., *she used to lock the door*), continuous (e.g., *she locks doors*), or progressive (e.g., *she is locking the door*).²⁶

While aspect is conveyed through morphological and syntactic features of language, it is also semantic and depends on interpretive practices.²⁷ A common test for perfectivity is whether a predicate may be used with an adverbial of completion, such as *in a minute*, *in an hour*, or *in a day*. Adverbials of completion are compatible with perfective forms (e.g., *the house collapsed in less than a minute*), but not with imperfective forms (e.g., *he wrote in a week* is not grammatically coherent, in contrast to *he wrote for a week* or *he wrote the report in a week*). Because perfectivity depends not only on the verb but on its object, when the object of a verb is a mass noun, an imperfective interpretation is also indicated. The action in the sentence *they burned wood*, for example, is imperfective even though the verb *burned* takes an object. The action cannot be viewed as completed because the object of the

²⁵ Paul J. Hopper, “Aspect and Foregrounding in Discourse,” in 12 *Syntax and Semantics: Discourse and Syntax* 239 (Talmy Givón ed., Academic Press 1979).

²⁶ Comrie, *Aspect* at 3–4, 12–13, 17–18, 24.

²⁷ Ronald W. Langacker, *Foundations of Cognitive Grammar*, 1 *Theoretical Prerequisites* 255 (Stanford Univ. Press 1999); see also William Hart & Dolores Albarracín, *Learning About What Others Were Doing: Verb Aspect and Attributions of Mundane and Criminal Intent for Past Actions*, 22 *Psychol. Sci.* 261–66 (2011) (observing that the “imperfective aspect . . . may support a more detailed representation of a described behavior that includes a greater number of concrete, component actions”); Carol J. Madden & Rolf A. Zwaan, *How Does Verb Aspect Constrain Event Representations?*, 31 *Memory & Cognition* 663–72 (2003) (finding that readers construct mental representations of completed events when the perfective aspect is used to describe an event).

action is unlimited.²⁸ This feature of perfectivity reveals the difference between tense and aspect. Aspect is often confused with tense, but a proposition can be presented in the perfect tense without being perfective in aspect. Tense refers to the function of language that relates events to the present time,²⁹ but the perfective aspect can occur in past or future tenses (e.g., *they will close the sale tomorrow*).

The perfective aspect serves the function of foregrounding the central events of a narrative, while the imperfective aspect provides the background of those events, contextualizing, amplifying, or commenting on them in ways that shape our understanding of the motives or attitudes that the speaker believes the events reflect.³⁰ As Paul Hopper explains, the events in a narrative sequence are each contingent on the completion of the preceding event, and “it is from this contingency that the notion of completeness which is characteristic of perfective aspect derives — the idea of the action viewed ‘as a whole.’”³¹ The imperfective aspect, Ronald Langacker notes, is qualitatively different in that it is not sequenced but represents the perception of “constancy through time instead of change.”³² The two aspects combine to create what Hopper calls a “flow-control mechanism”:

²⁸ See Næss, *Prototypical Transitivity* at 78.

²⁹ See, e.g., Comrie, *Aspect* at 2–3.

³⁰ See, e.g., James Forsyth, *A Grammar of Aspect: Usage and Meaning in the Russian Verb* 91 (1970); Hopper, 12 *Syntax and Semantics* at 213; Paul J. Hopper, *Some Observations on the Typology of Focus and Aspect in Narrative Language*, 3 *Studies in Language* 38, 60–61 (1979); Paul J. Hopper, “Aspect between Discourse and Grammar,” *Introduction, in Tense-Aspect: Between Semantics and Pragmatics* 9 (Paul J. Hopper ed., John Benjamins 1982); Hopper & Thompson, 56 *Language* at 251–53.

³¹ Hopper, 3 *Studies in Language* at 58, 60–61.

³² Langacker, *Foundations of Cognitive Grammar* at 255; cf. Hopper, 12 *Syntax and Semantics* at 215–16 (“Backgrounded clauses may be located at any point along the time axis or indeed may not be located on the time axis at all.”).

The aspects pick out the main route through the text and allow the listener (reader) to store the actual events of the discourse as a linear group while simultaneously processing accumulations of commentary and supportive information which add texture but not substance to the discourse itself.³³

The central events of any judicial narrative are the actions in which one party encroaches or impinges on another.

The perfective aspect is easily recognizable in the factual description of events in a typical legal complaint, supplying the particularity needed to satisfy a complaint's sufficiency requirements. The federal indictment for hate crimes, obstruction of free exercise of religious beliefs, and firearm charges for the April 2019 shooting inside the Chabad of Poway synagogue in Poway, California, for example, claims that the defendant

knowingly used, carried, and discharged a firearm, that is, a Smith & Wesson Model M&P 15 Sport II semi-automatic rifle, bearing serial number ending in 950, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States . . . and caused the death of and unlawfully killed with malice aforethought victim L.G-K.³⁴

The perfective aspect in this passage is created through a combination of the perfective verbs *used*, *discharged*, *caused*, and *killed* and the individuation of their objects. The following passage from a petition in a wrongful-death lawsuit shows the perfective aspect in a civil context:

The guardrail locked up within the impact head and proceeded to penetrate the vehicle through the center grill area. This penetration caused the vehicle to flip end over end,

³³ Hopper, 12 *Syntax and Semantics* at 220.

³⁴ Indictment, *United States v. Earnest*, No. 19-CR-1850-AJB, at 8 (S.D. Cal. May 21, 2019).

then going airborne to cross a thirty-foot concrete drain. . . .
Mr. Munoz was ejected near the vehicle resting place.³⁵

Each action in this sequence is discrete and contingent on the completion of the preceding action, presenting the events of the narrative as a linear group.

Because the perfective aspect is essential to stating a legal complaint, it is apparent throughout judicial proceedings, from motion and discovery practice to jury instructions and judicial opinions. In prosecutor Joseph Hartzler's opening statement in the trial of Timothy McVeigh for the 1995 bombing of the Alfred Murrah Federal Building in Oklahoma City, for example, Hartzler used the perfective aspect to foreground the actions McVeigh took leading up to the bombing:

McVeigh also obtained what was really a cookbook on how to make bombs. He ordered the book through the mail in the spring of 1993, and the book is called *Homemade C4 The Turner Diaries* taught him how to mix the different ingredients, how to set up the bomb, right down to how to drill a hole between the cargo box and the cab of the truck so that he could detonate it. . . . So he converted the Ryder truck from a cargo vehicle into a gigantic deadly bomb, and he drove it to Oklahoma City, and he detonated it at one of the busiest times of the day.³⁶

Rather than describing these events as habitual (e.g., McVeigh often studied bomb-making), continuous (e.g., McVeigh knew how to make bombs), or progressive (e.g., during the two years before the bombing, McVeigh was learning how to make bombs), Hartzler detailed, through perfective verbs and individuated objects, the

³⁵ Plaintiffs' Original Petition, *Munoz v. Trinity Indus., Inc.*, No. 130812, at 2–3 (Tex. Dist. Ct. Oct. 15, 2013).

³⁶ Quoted in Joel J. Seidemann, *In the Interest of Justice: Great Opening and Closing Arguments of the Last 100 Years* 263, 265, 282 (Regan Books 2004).

actions McVeigh completed to acquire and implement his bomb-making knowledge.

In Benjamin Cardozo's famous opening paragraph of *Palsgraf v. Long Island Railroad Co.*, Cardozo used the perfective aspect to describe the events leading to an injury at a railroad station that shaped the concept of foreseeability in modern tort law:

Plaintiff was standing on a platform of defendant's railroad after buying a ticket to go to Rockaway Beach. *A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package was dislodged, and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by a newspaper. In fact it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform, many feet away. The scales struck the plaintiff, causing injuries for which she sues.*³⁷

The perfective aspect is evident in Cardozo's description of the italicized events, each discrete action contingent on the completion of the previous action. The rest of the passage provides the background, contextualizing, amplifying, or commenting on the central events of the narrative. In combination, the aspects supply the "flow-control mechanism" that Paul Hopper describes.³⁸

According to Bernard Comrie, the perfective aspect is defined not by whether an internal temporal constituency is implied or can be imagined, but by the "lack of *explicit reference*" to a

³⁷ *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99, 99 (N.Y. 1928) (emphasis added).

³⁸ Hopper, 12 *Syntax and Semantics* at 220.

situation's internal temporal constituency.³⁹ Aspect simply provides a perspective on a situation and foregrounds or backgrounds elements of the situation within a discourse. Thus, it is important to recognize that perfective aspect can be used for situations that are internally complex or include a number of internal phases, provided only that "the whole of the situation is subsumed as a single whole."⁴⁰ During the 1979 negligence lawsuit by Karen Silkwood's estate against Kerr-McGee, for example, plaintiff's counsel Gerry Spence claimed, in the perfective aspect, that Kerr-McGee had misrepresented the carcinogenic properties of plutonium to its employees over a span of years, stating that the misrepresentations "stole their lives."⁴¹

2. Punctuality

Paul Hopper and Sandra Thompson explain that punctuality heightens transitivity because "actions carried out with no obvious transitional phase between inception and completion" have the clearest effect on their object.⁴² Although there is a strong correlation between punctuality and perfectivity, they do not necessarily coincide. The more punctual a situation, the less internal structure there is to depict, but it is possible to represent situations that unfold over a long period of time in perfective forms.⁴³ In contrast to aspect, which concerns the internal temporal constituency of an event, punctuality concerns the extent or "volume" of an event. As William Frawley explains, an event is

³⁹ Comrie, *Aspect* at 21 (emphasis added).

⁴⁰ *Id.* at 21, 41.

⁴¹ Quoted in Seidemann, *In the Interest of Justice* at 250.

⁴² Hopper & Thompson, 56 *Language* at 252.

⁴³ See Comrie, *Aspect* at 41–42; Hopper, 12 *Syntax and Semantics* at 215; cf. Sherrill et al., 10 *PLoS ONE* at 2 ("Events described with an imperfective aspect are more likely to be perceived to have a longer duration than events described with a perfective aspect.").

punctual if it is momentary and has no temporal duration (e.g., *Emilie purchased the horse*), but durative if it is necessarily distributed over time (e.g., *Liam slid down the embankment*).⁴⁴ Punctuality concerns only whether an event is extended or not rather than “any specific measurement of the event’s quantity or length.”⁴⁵ As Frawley explains: “Very short events, no matter how short, are not thereby punctual; nor are events that consist of a single undifferentiated act punctual simply because they are unitary.”⁴⁶

Because the punctuality of events often inheres in the meaning of verbs, some verbs may be classified as punctual (e.g., *receive*, *arrive*, *explode*) or durative (e.g., *walk*, *read*, *build*). During closing arguments in the 1935 trial of Richard Hauptmann for the Lindbergh kidnapping, prosecutor Anthony Hauck argued that Hauptmann “forcibly yanked the infant, Charles A. Lindbergh, Jr., from the crib.”⁴⁷ Defense counsel Ed Reilly argued that someone familiar with the child “picked [him] out of that crib.”⁴⁸ The same action was depicted in the perfective aspect by both Hauck and Reilly, but Hauck’s attribution of higher punctuality to the action supported the prosecution’s theory of the case that the kidnapping was the violent action of an intruder.

Alternatively, or in combination, punctuality can be indicated by adverbials of duration such as *suddenly*, *quickly*, and *instantly*, or duration can be indicated by adverbs such as *gradually*, *steadily*, and *slowly*. During prosecutor Joseph Hartzler’s opening statement in the Timothy McVeigh trial, for example, he told the

⁴⁴ Frawley, *Linguistic Semantics* at 306.

⁴⁵ *Id.* at 308.

⁴⁶ *Id.*

⁴⁷ *The Trial of Bruno Richard Hauptmann* 527, 532 (Sidney B. Whipple ed., Notable Trials Library 1989).

⁴⁸ *Id.*

jury that the bombing “instantaneously demolished” the front of the Alfred Murrah Federal Building.⁴⁹

Punctuality can also be indicated by situating an event at a precise point in time, contrasting the event with a background of uneventfulness, or indicating that the event caught observers by surprise. Prosecutor Hartzler referred to the precise time of the Oklahoma City bombing, noting that it occurred “at 9:02 that morning.”⁵⁰ Similarly, during closing arguments in the trial of Dzhokhar Tsarnaev for the Boston Marathon bombing, prosecutor Steven Mellin referred to the precise time of the defendant’s actions and set the scene of the crime by describing the background of a beautiful and ordinary Patriots’ Day in Boston:

I want to start back on Boylston Street, back where the carnage began. Picture the scene on Boylston just before the first blast. It’s a beautiful, sunny Patriots’ Day. It’s 2:45 p.m. And the defendant walks up. He walks up past the Forum restaurant, sees how crowded it is, and decides that’s the place to put his bomb.⁵¹

By referring to the precise time, setting the scene, and using the punctual verb *put*, Mellin heightens the contrast between a meandering crowd and the detonation of the bomb, focusing the jury on a single moment.

During prosecutor Gregory Waples’s opening statement in the 1985 murder trial of Bernhard Goetz, Waples used a similar combination of techniques to amplify the moment Goetz opened fire on the passengers of a New York subway car:

At first, December 22, 1984, seemed like a day much like any other day to the twenty passengers who were seated in

⁴⁹ Quoted in Seidemann, *In the Interest of Justice* at 260.

⁵⁰ Quoted in *id.*

⁵¹ Transcript, *United States v. Tsarnaev*, CR No. 13-10200-GAO, at 59:61 (D. Mass. May 13, 2015).

the seventh car of a ten-car express train. The train had begun this particular journey at White Plains Road in the Bronx at 12:30 P.M., and about 1:40 P.M. this grimy, graffiti-smearred car was lurching and swaying in the noisy and peculiar rhythm that is most unique to the New York City subway system as the train holed underground from Fourteenth Street station toward its next stop at Chamber Street.

Most of the passengers in that car were preoccupied with their own affairs, minding an infant child, reading, dozing, or contemplating a holiday season. Suddenly, however, that day that had begun so ordinarily turned into a nightmare. Suddenly every passenger on that train was jolted by the electrifying and terrifying spectacle of Bernhard Goetz standing on his feet, firing shots in every direction.⁵²

Waples referred to the precise time of the shooting, set the scene by describing the ordinary day of subway passengers, and used the adverb *suddenly* and the punctual verb *jolted* to heighten the contrast between the scene described and a gunman opening fire. Punctuality is created by the combination of these features and heightens the transitivity attributed to Goetz's actions.

3. Volition

Paul Hopper and Sandra Thompson explain that the effect of an action on its object is more apparent when the action is volitional.⁵³ In linguistics, volition refers to whether an actor intended to cause the effect of an action on its object. The related concept of agency is discussed separately below, but an actor can cause an effect on an object without intending to do so or intend to cause an effect on an object without the capacity to do so. Volition is distinguished from agency by the actor's cognitive involvement

⁵² Quoted in Seidemann, *In the Interest of Justice* at 165.

⁵³ Hopper & Thompson, 56 *Language* at 252.

with the action — what the actor thought of the action or how they classified it.⁵⁴

In some cases, volition inheres in the meaning of certain verbs, such as those indicating desire or design (e.g., *seek, pursue, hunt, attempt, conspire, plan, arrange, organize*). An apt example is the verb *sneak*, which came to the fore during the 1993 trial of Randy Weaver and Kevin Harris on criminal charges related to the siege on Weaver's property by the U.S. Marshals Service and the FBI's Hostage Rescue Team. The showdown left three dead: one U.S. Marshal and Weaver's wife and son. The significance of the verb *sneak* became apparent during defense counsel Gerry Spence's cross-examination of Deputy U.S. Marshal Arthur Roderick, who led the reconnaissance team onto Weaver's property:

Spence: You told the ladies and gentlemen of the jury that you came sneaking out there in the middle of the night —

Roderick: I did not say anything about sneaking.

Spence: You did sneak, didn't you?

Roderick: What do you call sneaking? You're putting words in my mouth.

Spence (looking for a dictionary): *Sneak*, "to go stealthily or furtively."

Roderick: Are you asking me what I said or what you said? I did not say I was sneaking. You said I was sneaking.

Spence: Now, don't get excited.

Roderick: I'm not getting excited. I'm just explaining to you what your question was.

⁵⁴ See, e.g., Ronald W. Langacker, "Control and the Mind/Body Duality: Knowing vs. Effecting," in *Cognitive Linguistics in Action: From Theory to Application and Back* 171 (Elżbieta Tabakowska, Michał Choiński & Łukasz Wiraszka eds., De Gruyter 2010) ("If we do something under volitional control, we do it knowingly, and know that we are doing it.").

Spence: You asked me, didn't you? Or have you forgotten? You asked me what I meant by *sneak*.

Roderick: Correct, but I did not say that.

Spence: I didn't ask you that.

Roderick: Yes you did.⁵⁵

In this exchange, although *sneak* is not a transitive action, it provides the context for attributing volition to the U.S. Marshals' actions. *Sneak* suggests that their purpose was not just to gather intelligence: they either knew a violent confrontation would ensue or intended to ambush the Weavers.

Many adverbs familiar to lawyers can likewise indicate volition, such as *intentionally*, *willfully*, *purposefully*, *maliciously*, and *deliberately*, or correspondingly *unintentionally*, *accidentally*, *inadvertently*, or *involuntarily*. Volition is also indicated by adverbs that attach desire or design to verbs that might not otherwise inherently indicate volition. Two examples, *stealthily* and *furtively*, appeared in the definition of *sneak* that Gerry Spence read in his exchange with Arthur Roderick above. Other examples are *cleverly*, *deftly*, *proficiently*, *skillfully*, and *carefully*.

Similarly, volition can be indicated by adjectives that suggest desire or design, such as *earnest*, *enthusiastic*, *impatient*, and *eager*. During the murder trial of Daniel Sickles, defense counsel James Brady described the victim, Philip Barton Key, as *eager* during the final moments of his life, as Key sought to signal Sickles's wife for a romantic encounter:

Mr. Key, with the means of thus having the person of Mrs. Sickles, is there approaching the house of Mr. Sickles, supposing that he had entirely eluded the latter; he is eager, as he thought certain to obtain the wife.⁵⁶

⁵⁵ Quoted in Lief & Caldwell, *The Devil's Advocates* at 132.

⁵⁶ Quoted in *id.* at 350.

By amplifying Key's volition, Brady heightened the transitivity attributed to Key's actions to support the claim that Sickles had killed him to defend his home and family.

An actor's cognitive involvement with an action can also be indicated by many forms of contextual evidence. This concept is familiar to lawyers, given the many legal complaints that require proof of specific intent. Volition can be indicated by an actor's admissions, confessions, and statements to others, or by repeated behavior. While evidence of crimes, wrongs, or other acts is not admissible to prove a person's character in order to show that they acted consistent with that character on a particular occasion, this evidence is admissible to prove motive, intent, preparation, plan, knowledge, absence of mistake, or lack of accident.⁵⁷ But even if specific intent is not an essential element of a legal complaint, evidence of preparation or planning is a common means of indicating volition and heightens transitivity. During the Sickles trial, besides characterizing Key as *eager*, James Brady provided a vivid description of Key's preparation to meet Sickles's wife:

Mr. Key had been standing in front of the clubhouse, or in the park, with his opera glass in his hand; he saw Mr. Sickles go out and pass up the street in which his house is; at that instant Mr. Key goes round the other way to go round Lafayette Square. Mr. Sickles is now gone and Mr. Key may be a little bolder; he may have a little less caution and more courage than ordinarily; he is now certain of his victim; he has the handkerchief, the opera glass, the keys, the locks waiting to receive them, the intent in his mind being exclusively to employ all his intellectual powers, of his physical and moral nature, to commit the act of adultery.⁵⁸

By describing the steps Key took to secretly meet Sickles's wife — and by amplifying Key's desire with the phrases *be a little bolder*

⁵⁷ See, e.g., Fed. R. Evid. 404.

⁵⁸ Quoted in Lief & Caldwell, *The Devil's Advocates* at 349–50.

and *have a little less caution and more courage, being certain of his victim*, culminating in an explicit reference to Key's intent — Brady attributes volition to Key's actions and foregrounds them as those of an aggressor "going to make war upon Mr. Sickles and his wife and child."⁵⁹

Because transitivity involves actions rather than states and is heightened by the use of the perfective aspect, some tension is apparent between the components of aspect and volition, volition being a state of mind that is often presented in the imperfective aspect. In the examples above from the Sickles trial, James Brady described Key's actions in the imperfective aspect (e.g., *Mr. Key . . . is there approaching the house, . . . supposing . . . ; he is eager* and *Mr. Key goes round the other way . . . ; he is now certain of his victim; he has the handkerchief, the opera glass*). In the earlier example from the Ruby Ridge trial, the word *sneaking* is also imperfective in aspect. By contrast (and as discussed earlier), prosecutor Joseph Hartzler used the perfective aspect to describe Timothy McVeigh's preparation and planning for the Oklahoma City bombing (e.g., *McVeigh also obtained what was really a cookbook on how to make bombs. He ordered the book . . . in the spring of 1993, . . . converted the Ryder truck . . . into a gigantic deadly bomb, . . . drove it to Oklahoma City, and . . . detonated it*).⁶⁰

Some empirical studies have concluded that the imperfective aspect increases attributions of intentionality to an actor and may influence legal judgments.⁶¹ In one study, participants were asked to take a judge's perspective and were randomly assigned to read

⁵⁹ Quoted in *id.*

⁶⁰ Quoted in Seidemann, *In the Interest of Justice* at 263, 265, 282.

⁶¹ Hart & Albarracín, 22 *Psychol. Sci.* at 265; see also Sherrill et al., 10 *PLoS ONE* at 1 ("Grammatical aspect has indirect influences on legal judgments to the extent that variability in aspect changes the features of the situation model that align with criteria for making legal judgments.").

the perfective-aspect or imperfective-aspect version of the following case report about a man who shot another man after an argument:

After an argument broke out between James Westmoreland and Darryl McElroy in a 2009 dice game in East Cleveland, Westmoreland *was pulling/pulled* out his gun and *was pointing/pointed* it at Darryl McElroy. As the other players, including Darryl McElroy, attempted to run away, Westmoreland *was firing/fired* gun shots, one of which struck McElroy in the back, paralyzing him. McElroy and others identified Westmoreland as the shooter, and Westmoreland was later arrested and confessed to the crime.

Participants who read the version containing the imperfective aspect (*was pulling out . . . was pointing . . . was firing*) attributed greater intentionality to Westmoreland than did participants who read the perfective version (*pulled . . . pointed . . . fired*).⁶² The results are complicated by the fact that other passages of the imperfective version used the perfective aspect (e.g., *gun shots, one of which struck McElroy . . . , paralyzing him, McElroy and others identified Westmoreland as the shooter, and Westmoreland . . . confessed to the crime*). But the results nevertheless suggest that the imperfective aspect may play an important role in communicating volition in legal settings. By depicting events from an internal rather than distanced perspective, the imperfective aspect may be uniquely suited to depicting volition, working in conjunction with the perfective aspect to heighten transitivity.

4. Affirmation

Actions stated affirmatively are more transitive than those negated. As William Frawley explains, speakers often qualify their statements “with respect to believability, reliability, and general

⁶² Hart & Albarracín, 22 *Psychol. Sci.* at 264.

compatibility with accepted fact.”⁶³ This area of semantics is called *modality*, which indicates a speaker’s attitude or opinion toward the factual status of a proposition.⁶⁴ The most fundamental category of modality is whether a speaker expresses a proposition with affirmative or negative polarity, or whether a proposition is stated as a fact or negated by indicating a divergence between the stated proposition and reality.⁶⁵ Negation is most often indicated by the particle *not* or the article *no*, by a pronoun such as *none* or *nothing*, or by an adverb such as *never* or *nowhere*. For example, *he withdrew the funds* is stated with affirmative polarity, while *he did not withdraw the funds* or *he never withdrew the funds* or *no one withdrew the funds* is stated with negative polarity.

Among the implications that follow from the fact that affirmative polarity functions as a component of transitivity is that negation does not eliminate transitivity but merely lowers it. This observation explains the weakness of denials that rely exclusively on negation, such as President Nixon’s infamous “I am not a crook.” William Strunk and E.B. White note “the weakness inherent in the word *not*,” that “consciously or unconsciously, the reader is dissatisfied with being told only what is not; he wishes to be told what is.”⁶⁶ They critique these forms on both stylistic and epistemic grounds, writing that negation produces “tame, colorless, hesitating, noncommittal” writing that reflects indefinite guesswork and lacks “authority.”⁶⁷

The more significant difficulty with denials in an adversarial context is that denying a claim propagates it. As George Lakoff

⁶³ Frawley, *Linguistic Semantics* at 384–85.

⁶⁴ *Id.*

⁶⁵ *Id.* at 390.

⁶⁶ Strunk & White, *The Elements of Style* at 19–20.

⁶⁷ *Id.*; cf. Dworsky, *Little Book on Legal Writing* at 137 (“Positive assertions are generally stronger than negative ones.”).

writes in *Don't Think of an Elephant!*, “even when you negate a frame, you activate the frame.”⁶⁸ Thus, “if I tell you, ‘Don’t think of an elephant!,’ you’ll think of an elephant.”⁶⁹ Moreover, the more you activate the frame, even by denying it, the stronger it gets:

The moral for political discourse is clear: When you argue against someone on the other side using their language and their frames, you are activating their frames, strengthening their frames in those who hear you, and undermining your own views.⁷⁰

The phenomenon Lakoff describes is aptly depicted in the 1997 dark comedy *Wag the Dog*. In that film, the president’s political consultant distracts the media from a scandalous story by introducing a false story about the construction of a B-3 bomber. The consultant’s vehicle for introducing the false story was a gratuitous denial involving the president’s change in travel schedule: “It’s got nothing to do with the B-3 bomber.” The comment leads the media to pursue the nonexistent story of a new bomber, and by repeatedly denying that a new bomber is under construction, the president’s advisers continue to propagate it: “There is no new B-3 bomber, and I don’t know why these rumors get started.”⁷¹

The moral for legal discourse is equally clear. The danger of propagating frames through denials is particularly high when those frames attribute transitivity to oneself or one’s client. Lawyers often recognize this by turning the tables on their opponents instead of relying on simple denials. Indeed, this technique dates back to ancient Greece, where the author of the *Rhetoric to Alexander*, a rhetorical handbook for legal advocates, advised that

⁶⁸ George Lakoff, *The All New Don't Think of an Elephant! Know Your Values and Frame the Debate* xii (2014).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Wag the Dog* (New Line Cinema 1997).

“when it is a question of acts, you should, if possible, turn the blame upon your adversaries, or, failing that, upon someone else.”⁷² In Cicero’s defense of Sextus Roscius against accusations that he had murdered his father, Cicero did not rely on simple denials of the accusations or on Roscius’s alibi. Instead, Cicero blamed the murder on a plot by Roscius’s accusers to deprive Roscius of his inheritance:

They are the accusers, who have laid hands upon the property of my client, he is the defendant, to whom they have left nothing but ruin; they are the accusers, who profited by the murder of my client’s father, he is the defendant, to whom his father’s death brought not only sorrow, but also poverty; they are the accusers, who passionately desired to murder my client, he is the defendant who is obligated to present himself even before this tribunal with an escort, for fear he may be killed in this very same spot before your eyes; lastly, they are the accusers, whose trial the people demands, he is the defendant, who is the sole survivor of their infamous massacre.⁷³

In this passage, Cicero answers the accusations against Roscius by foregrounding the transitive acts of his accusers and depicting Roscius as their victim.

Such competing attributions of transitivity are often an important locus of trial arguments. This was true for defense counsel Clarence Darrow’s closing arguments during the 1925 murder trial of Henry Sweet. Sweet was accused of murdering Leon Breiner — a member of a white mob that laid siege to Sweet’s Detroit home to drive Sweet and his family from the neighborhood — after Breiner was shot and killed from inside the home.

⁷² *Rhetorica ad Alexandrum* 1442^b (Harris Rackham trans., 1937; repr. Loeb Classical Library 1983).

⁷³ Cicero, *The Speech in Defence of Sextus Roscius* at 133.

After the prosecution repeatedly elicited sympathy for Breiner, Darrow turned the tables on him:

But who was Breiner, anyway? He was a conspirator in as foul a conspiracy as was ever hatched in a community; in a conspiracy to drive from their homes [sic] a little family of black people. Not only that, but to destroy these blacks and their home.

....

... Gentlemen, that mob was bent not only on making an assault upon the rights of the owners of that house, not only making an assault upon their persons and their property, but they were making an assault on the Constitution and the laws of the nation and the state under which they live.⁷⁴

By describing Breiner's actions with the transitive verbs *drive* and *destroy* and the nominalized verb *assault*, Darrow depicts Breiner as an aggressive actor and the Sweets as his victims.

An alternative to turning the tables on accusers or alleged victims is to shift the blame to a third party or to conditions. For example, in his opening statement in the trial of New York police officers who shot and killed Guinean immigrant Amadou Diallo, defense lawyer Bennett Epstein argued that the 19 bullet wounds Diallo sustained had been destined to happen:

I am talking about conditions that would make this kind of accident destined to happen and that would take good officers like Boss, Carroll, and McMellon and Murphy and put them in a no-win situation in a dimly lit vestibule.⁷⁵

In this description, *conditions* assumes the role of a transitive actor that would *make* the shooting happen, *take* officers, and *put* them in a certain situation. The officers are no longer actors but

⁷⁴ Quoted in Lief & Caldwell, *The Devil's Advocates* at 288.

⁷⁵ Quoted in Seidemann, *In the Interest of Justice* at 203.

the objects of conditions acting on them. Similarly, Epstein argued that “these four officers were sent into the breach by us” because they were only doing their duty.⁷⁶ He did not simply deny the plaintiffs’ theory of the case, but introduced an alternative narrative using affirmative polarity.

5. Realis

According to Paul Hopper and Sandra Thompson, an action that is presented as “occurring in a non-real (contingent) world” is not as effective as one “whose occurrence is actually asserted as corresponding directly with a real event.”⁷⁷ Closely related to negation as a category of modality is epistemic modality, based on the distinction between the realis mode, when the actual world and the expressed world coincide, and the irrealis mode, when there is some distance between actual and expressed worlds.⁷⁸ Epistemic modality reflects the ways in which language expresses concepts such as possibility, necessity, inference, belief, report, hearsay, conclusion, deduction, opinion, commitment, speculation, doubt, and evidence.⁷⁹ William Frawley writes that in contrast to negation, which reflects a complete “mismatch” of actual and expressed worlds, epistemic modality reflects “the *convergence of the two*, particularly . . . the *likelihood* of that convergence and the *evidence* that a speaker marshals to assert this convergence.”⁸⁰ Epistemic modality relativizes truth to speakers by “relating their current state of knowledge or belief to the content of their expressions.”⁸¹ Transitivity is heightened by

⁷⁶ Quoted in *id.*

⁷⁷ Hopper & Thompson, 56 *Language* at 252.

⁷⁸ Frawley, *Linguistic Semantics* at 388.

⁷⁹ *Id.* at 407.

⁸⁰ *Id.* at 406–07.

⁸¹ *Id.* at 408.

convergence between the actual and expressed worlds and lowered by their divergence.

Epistemic modality is indicated by qualifiers that can be categorized according to whether they express degrees of convergence between the actual and expressed worlds or reference the grounds for finding such a convergence. Qualifiers that express degrees of convergence between actual and expressed worlds range from verbs such as *seem*, *tend*, *appear*, *believe*, *think*, and *assume*, and auxiliary verbs such as *can*, *may*, *might*, *could*, *would*, and *should*, to adverbs such as *probably*, *likely*, *possibly*, *perhaps*, and *conceivably*. They also include adjectives such as *probable*, *possible*, and *conceivable*, and adverbs of frequency such as *often*, *usually*, *sometimes*, *occasionally*, and *seldom*. Qualifiers that reference the grounds for finding a convergence between actual and expressed worlds include verbs such as *indicate*, *suggest*, *see*, *hear*, *witness*, *testify*, *claim*, *argue*, *imply*, and *infer*; adverbial forms such as *presumably*, *supposedly*, *allegedly*, *according to*, *if*, and *even if*; adjectives such as *presumed*, *supposed*, *alleged*, and *claimed*; and clauses such as *heard that*, *saw that*, *learned that*, *said that*, *testified that*, *assumed that*, *if that is true*, and *if you believe that*. These and similar forms lower transitivity by indicating distance between actual and expressed worlds.

Although Strunk and White call qualifiers “the leeches that infest the pond of prose,”⁸² Stephen Toulmin points out that “the criteria for deciding in practice when any modal qualifier can appropriately be employed” vary by argument field.⁸³ The criteria for deciding when a qualifier is appropriate also depend on the evidence and a speaker’s stance. Teresa Rambo and Leanne Pflaum write that when lawyers can make unqualified statements, they should do so, observing that lawyers often qualify claims

⁸² Strunk & White, *The Elements of Style* at 73.

⁸³ Stephen E. Toulmin, *The Uses of Argument* 154 (updated ed. 2003).

more than necessary for fear that additional, contrary evidence may come to light.⁸⁴ According to Alan Dworsky, legal advocates should create the impression that they are not really arguing but are “giving the gospel truth on the particular issue, as mandated by the law and the facts.”⁸⁵ Lawyers are generally advised to refrain from using qualifiers such as *but*, *however*, and *even if* on adversarial grounds because they may concede the validity of competing claims.⁸⁶

But lawyers cannot always avoid qualifiers. Nor should they, of course. Instead, they should use qualifiers appropriately. Although qualifiers lower transitivity, when necessary for accuracy they can build credibility and avoid unnecessary criticism by audiences. Lawyers also typically want to qualify competing claims. Consider how Australian prosecutor Ian Barker addressed the testimony of Lindy Chamberlain during the 1982 murder trial of Lindy and Michael Chamberlain. The Chamberlains claimed that a dingo had taken their two-month-old baby from a tent near Ayers Rock:

What is this dingo supposed to have done? It managed, if her story is true, to kill the child in the bassinet, drag her from the basket, divest her of two blankets and a rug At the shortest, it walked some four or five kilometers, if the story is true, to the base of Ayers Rock and, if during part of that distance it walked through the bush, it managed to do so without tearing or pulling the fabric of the jump-suit, collecting almost nothing in the nature of seeds or sticks, or other vegetation along the way.⁸⁷

⁸⁴ Rambo & Pflaum, *Legal Writing by Design* at 175–76; cf. Steven D. Stark, *Writing to Win: The Legal Writer* 31 (1999) (“Lawyers tend to be paranoid writers, using words such as ‘seem,’ ‘appears,’ and ‘maybe’ throughout their writing.”).

⁸⁵ Dworsky, *Little Book on Legal Writing* at 138.

⁸⁶ See, e.g., Jessica D. Findley & Bruce D. Sales, *The Science of Attorney Advocacy: How Courtroom Behavior Affects Jury Decision Making* 164 (2012).

⁸⁷ Quoted in John Bryson, *Evil Angels: The Case of Lindy Chamberlain* 16 (2016).

In this passage, Barker not only exaggerates the implausibility of the evidence but qualifies the story at the beginning with *supposed* and by his repeated use of *if* in the clauses *if her story is true*, *if the story is true*, and *if . . . it walked through the bush*.

During the 1995 murder trial of O.J. Simpson, defense counsel Johnnie Cochran used similar qualifiers when addressing the prosecution's theory about the walkway behind Simpson's house, where the police claimed to have found a glove used in the murders:

With regard to that walkway, if O.J. Simpson had been the one for whatever reason to walk into that air-conditioning, where is the hair and trace? Where is the fiber? Where is the blood? They want to tell you about his fingers bleeding one minute, and it stops bleeding, and in Miss Clark's scenario he bleeds, it coagulates, stops bleeding, and then it starts bleeding again, because that is convenient for their theory.⁸⁸

Cochran casts doubt on the prosecution's narrative with the qualifiers *if . . . had been*, *for whatever reason*, *they want to tell you*, *in Miss Clark's scenario*, and *their theory*, and with repeated questions about missing evidence. It all emphasizes distance between the prosecution's expressions and reality.

In a judicial context, one of the most challenging issues involving qualifiers is whether and how to attribute claims to evidentiary sources because attributions such as *according to*, *said that*, and *testified that* amplify the distance between actual and expressed worlds. While attribution may be necessary to help communicate interpretations of the evidence to an audience, it can also unnecessarily lower the transitivity of the events in a narrative. Besides dropping unnecessary attribution altogether, common solutions to this problem include trailing attributions that position attribution after claims rather than before and summary

⁸⁸ Quoted in Seidemann, *In the Interest of Justice* at 39.

attributions that hold attribution until all the claims attributed to a source are asserted. Jeanne Fahnestock notes that attribution can lower the truth status of claims because “what has to be sourced does not have immediate recognition as a fact.”⁸⁹ But when trailing attribution is used, what precedes the attribution “assumes greater fact status by being taken in first, as an unattributed proposition,” while in the end the audience discovers the source, “a ‘save’ for the objectivity” of the speaker.⁹⁰

6. Agency

According to Paul Hopper and Sandra Thompson, participants high in agency can effect a transfer of an action in a way that those low in agency cannot.⁹¹ The action in the sentence *George startled me*, for example, is normally interpreted as a perceptible event, in contrast to the action in the sentence *the picture startled me*, which suggests an internal state.⁹² As discussed earlier, although volition and agency are closely related, an actor can cause an effect on an object without intending to do so or correspondingly intend to cause an effect on an object without the capacity to do so. In linguistics, agency refers to an actor’s capacity to cause an effect on an object rather than what the actor thought of the action or how they classified it. Some linguists define agency by an actor’s semantic independence, or whether an agent generates the effects of actions independently.⁹³

⁸⁹ Jeanne Fahnestock, *Rhetorical Style: The Uses of Language in Persuasion* 138 (2011).

⁹⁰ *Id.*

⁹¹ Hopper & Thompson, 56 *Language* at 252.

⁹² *Id.*

⁹³ Frawley, *Linguistic Semantics* at 205; Robert A. Bell, Matthew S. McGlone & Marko Dragojevic, *Bacteria as Bullies: Effects of Linguistic Agency Assignment in Health Message*, 19 *J. Health Comm.* 341 (2013) (defining agency assignment

Yet volitional actions do imply agency.⁹⁴ As a result, it is not uncommon to find the agency of actors that are considered non-volitional, such as animals or inanimate objects, amplified by attributing volition to them. Consider Mark Twain's famous description of a thunderstorm in *Life on the Mississippi*:

The lightning was as diligent as the thunder, and produced effects which enchanted the eye and set electric ecstasies of mixed delight and apprehension shivering along every nerve in the body in unintermittent procession.

. . . [T]he wind increased in fury and began to wrench off boughs and tree-tops and send them sailing away through space.⁹⁵

By describing the lightning as *diligent* and attributing *fury* to the wind, Twain attributes desire and design to them and thereby heightens the transitivity of their actions.

Even without suggesting volition, however, agency changes how people perceive events, attribute blame, and distribute punishment. Empirical studies have found, for example, that the assignment of agency for viral transmission to a virus (e.g., *H1N1 may infect thousands*) rather than to people (e.g., *thousands may contract H1N1*) heightens the perceived susceptibility to, and severity of, the virus.⁹⁶ Other studies have found that transitive

in language as “the ascription of action or change to one or more entities involved in the event”).

⁹⁴ See Donald Davidson, *Essays on Actions and Events* 45–46 (2d ed. 2001) (noting that “a man is the agent of an act if what he does can be described under an aspect that makes it intentional”).

⁹⁵ Mark Twain, *Life on the Mississippi* 89 (1883; repr. New York: Modern Library 2007).

⁹⁶ See Bell, McGlone & Dragojevic, 19 *J. Health Comm.* at 340–58; Robert A. Bell, Matthew S. McGlone & Marko Dragojevic, *Vicious Viruses and Vigilant Vaccines: Effects of Linguistic Agency Assignment in Health Policy Advocacy*, 19 *J. Health Comm.* 1178–93 (2014); Matthew S. McGlone et al., *Don't Let the Flu Catch You: Agency Assignment in Printed Educational Materials About the H1N1 Influenza Virus*, 18 *J. Health Comm.* 740–56 (2012).

agentive descriptions of accidents led people to attribute more blame and impose higher financial penalties than intransitive nonagentive descriptions even when people were shown videos of the accidents.⁹⁷ Participants in one study who read the agentive version of the following accident description blamed the actor more — and assigned higher financial penalties to the actor — than those who read the nonagentive version, although neither version indicates volition:

Mrs. Smith and her friends were finishing a lovely dinner at their favorite restaurant. After they settled the bill, they decided to head to a nearby café for coffee and dessert. Mrs. Smith followed her friends and as she stood up, *she flopped her napkin/her napkin flopped* on the centerpiece candle. *She had ignited the napkin!/The napkin had ignited!* As Mrs. Smith reached to grab the napkin, *she toppled the candle/the candle toppled* and *ignited the whole tablecloth/the whole tablecloth ignited* too! As she jumped back, *she overturned the table/the table overturned* and *ignited the carpet/the carpet ignited*, as well. Hearing her desperate cries, the restaurant staff hurried over and heroically managed to put the fire out before anyone got hurt.⁹⁸

The results of this study and others considering attributions of agency strongly suggest that nonvolitional agentive descriptions of events can significantly affect our perception of legal liability.

Lawyers often recognize the distinction between volition and agency and the significance of each. Consider prosecutor Ian Barker's rebuttal of the testimony of Lindy Chamberlain, in which Barker questions the capacity of a dingo to have taken the Chamberlains' baby daughter as Lindy Chamberlain described (and a coroner confirmed years later):

⁹⁷ See Fausey & Boroditsky, 17(5) *Psychonomic Bull. & Rev.* at 644–50; cf. Conley & O'Barr, *Just Words* at 109–12.

⁹⁸ Quoted in Fausey & Boroditsky, 17(5) *Psychonomic Bull. & Rev.* at 645.

What is this dingo supposed to have done? It managed, if her story is true, to kill the child in the bassinet, drag her from the basket, divest her of two blankets and a rug, shake her body vigorously at the entrance of the tent, then carry her off into the night in such a way that it left virtually no clues in the tent by way of blood or hairs or anything else. It left no blood or drag-marks by the outside of the tent. It was able to pass by the child's mother in full view without disclosing that it was carrying a baby. It managed to kill the child while all the buttons on the jump-suit were done up, and managed to carry the baby a long way. At the shortest, it walked some four or five kilometers, if the story is true, to the base of Ayers Rock and, if during part of that distance it walked through the bush, it managed to do so without tearing or pulling the fabric of the jump-suit, collecting almost nothing in the nature of seeds or sticks, or other vegetation along the way. So, all in all, ladies and gentlemen, it was not only a dexterous dingo, it was a very tidy dingo.

It managed to cut the collar and the sleeve with a pair of scissors. An unlikely circumstance, you may think, even if we're dealing with the most intelligent and perceptive of animals. . . .

Supposing the dingo was on trial here. How could you possibly convict it on this evidence?⁹⁹

By using verbs that suggest both volition and agency, such as *divest*, *disclose*, *manage*, and *cut . . . with a pair of scissors*, and by framing the event as one requiring dexterity and tidiness, culminating in the *reductio ad absurdum* of the dingo standing trial for murder, Barker claimed that only a human being had the design or the capacity to cause the death of the Chamberlains' daughter in a manner consistent with the evidence. By exaggerating the agency required to fit the evidence, Barker suggested that Lindy

⁹⁹ Quoted in Bryson, *Evil Angels* at 16; see also Malcolm Brown, *Dingo Baby Ruling Ends 32 Years of Torment for Lindy Chamberlain*, *Guardian* (June 12, 2012, 1:00 PM EDT), <https://www.theguardian.com/world/2012/jun/12/dingo-baby-azaria-lindy-chamberlain>.

Chamberlain was lying and had herself caused her daughter's death.

7. Affectedness

The degree to which an action is transferred to an object is a function of how completely the object is affected by it.¹⁰⁰ In the following clauses, for example, the action is transferred to the object to a greater degree in the first clause than in the second because the object in the second clause is less affected:

I drank up the milk.

*I drank some of the milk.*¹⁰¹

While lawyers are familiar with the concept of damages, transitivity requires more than a description of damages. Linguists have also found that the effect of an action on the actor combines with the effect on an object to create transitivity, so that transitivity is also higher when the effect on the actor is low relative to the effect on an object.¹⁰² This quality of transitivity may be entailed by transitivity's requirement of two participants. According to Åshlid Næss, the distinctness of participants is even the centrally defining feature of transitivity. The most transitive clause is one in which two participants not only are physically distinct but "play maximally distinct roles in the event in question," one in which the actor and target are defined "in maximal opposition to each other."¹⁰³

Affectedness also bears a close relationship to punctuality, in that an action's effects are made most apparent by focusing on the

¹⁰⁰ Hopper & Thompson, 56 *Language* at 252.

¹⁰¹ *Id.* at 252–53.

¹⁰² See Næss, *Prototypical Transitivity* at 77.

¹⁰³ *Id.* at 30.

moment when harm occurred and contrasting an object's condition immediately before and after the action. Consider the following description of damages from a victim-impact statement in a vehicular-assault case, in which the speaker focuses on the moment of nonrecognition during a mother's initial encounter with her daughter after a collision:

[W]hen I got my first look at Samantha, I couldn't stop the tears from flowing. . . . [T]he person in the bed did not look like my daughter. She had her head wrapped in bandages from the gash that had just missed her eye. The nurse told us that the bones below her eye had been crushed and would require surgery. Her jaw had been wired shut. Samantha had a breathing tube because her fractured ribs had punctured a lung, requiring another tube in her chest to keep it inflated and drain the fluid. . . . Farther down her body, amongst the numerous scrapes, gashes and lacerations, the ligament had been torn from her kneecap, requiring two more surgeries.¹⁰⁴

Similarly, during his closing argument in the Tsarnaev trial, prosecutor Steven Mellin focused on the immediate impact of the bombing:

This is what terrorism looks like. It's Martin Richard bleeding on the ground in agony while his mother bends over him, injured in one eye, and begs him to stay alive, saying, "Please, Martin. Please, Martin."

It's Lingzi Lu screaming in pain as she dies on that street while her friend Danling tries to hold her abdominal organs inside.

It's Krystle Campbell, burned all over her body, filled with shrapnel, with smoke coming out of her mouth.

. . . .

¹⁰⁴ Victim Support Services, Victim Impact Statements, "VIS Vehicular Assault example," <http://victimsupportservices.org/help-for-victims/victim-impact-statements/> (accessed July 14, 2019).

And it's nearly 20 other people staring in shock at their mangled and ruined limbs when just moments before they were fine.¹⁰⁵

A similar strategy is to focus on the moment a person first learned of an action's effects. The victim-impact statement read to the jury in *Booth v. Maryland* focused on the moment the victims' son last saw his parents and first missed them: "[T]he victims' son saw his parents alive for the last time on May 18th. They were having their lawn manicured and were excited by the onset of spring. He called them on the phone that evening and received no answer."¹⁰⁶

The relative contrast between the effect of an action on the actor and on its object is often indicated by portraying victims as helpless. During his opening statement in the Bernhard Goetz trial, prosecutor Gregory Waples told the jury that "when the defendant fired the second of these shots at Cabey, Darrell Cabey was sitting down on the subway seat, much like you are sitting in your jury seats now, absolutely helpless."¹⁰⁷ Similarly, prosecutor Steven Mellin emphasized the victims' helplessness during his closing argument in the Tsarnaev trial:

Remember what Alan Hern said, the father of 11-year-old Aaron Hern. He said he was helpless trying to save Aaron. Remember what Steve Woolfenden said. He was terrified and helpless as little Leo was carried away, little Leo screaming for mommy and daddy, being handed off to strangers. Steve Woolfenden didn't know if he would live or die, and he didn't know if he would live to ever see Leo again. These

¹⁰⁵ Transcript, *United States v. Tsarnaev*, CR No. 13-10200-GAO, at 59:63 (D. Mass. May 13, 2015).

¹⁰⁶ Quoted in Paul Gewirtz, "Victims and Voyeurs: Two Narrative Problems at the Criminal Trial," in *Law's Stories: Narrative and Rhetoric in the Law* 158–59 (Peter Brooks & Paul Gewirtz eds., Yale Univ. Press 1996).

¹⁰⁷ Quoted in Seidemann, *In the Interest of Justice* at 166.

fathers were helpless. They were helpless in saving the lives of their own children because of that defendant.¹⁰⁸

Emphasizing that a harm occurred suddenly or took the victim by surprise can also indicate helplessness, revealing the common focus of punctuality and affectedness on moments. For example, during the 1994 trial of Byron De Law Beckworth for the 1963 murder of civil-rights leader Medgar Evers, prosecutor Bobby DeLaughter argued that the case was about an unarmed man

arriving home [in] the late hours of the night, having been working, coming home to his family, his wife, three small children that were staying up, waiting for him to get home inside the home there, getting out of his automobile with his back turned, and being shot down by a bushwacker from ambush.¹⁰⁹

During the 1971 murder trial of Charles Manson and two of his followers, prosecutor Vincent Bugliosi similarly emphasized the late hour of the crime: “The killers, armed with deadly weapons, went into the homes of the victims, in the dead of night, and mercilessly stabbed them to death.”¹¹⁰

8. Individuation

An action can be more effectively transferred to an object that is individuated from both the actor and the object’s background than to one that is not.¹¹¹ Thus, a definite object is viewed as more clearly affected than an indefinite one, an object identified with a proper noun more than one identified with a common noun, a

¹⁰⁸ Transcript, *Tsarnaev* at 59:62–63.

¹⁰⁹ Quoted in Michael S. Lief, H. Mitchell Caldwell & Ben Bycel, *Ladies and Gentlemen of the Jury: Greatest Closing Arguments in Modern Law* 297–98 (2006).

¹¹⁰ Quoted in *id.* at 235.

¹¹¹ Hopper & Thompson, 56 *Language* at 253.

concrete object more than an abstract object, a singular object more than a plural object, and a count noun more than a mass noun.¹¹² Because perfectivity depends not only on a verb but on its object, individuation is closely related to aspect. As discussed earlier, when the object of a verb is a mass noun, an imperfective rather than perfective interpretation is indicated because an action cannot be viewed as completed if the object of the action is unlimited.¹¹³ Individuation is also closely related to affectedness and to the fact that reflexive actions are less transitive than those involving two participants. Åshlid Næss even argues that the distinctness of participants is the central defining function of transitivity.¹¹⁴ Thus, although individuating victims is commonly believed to make them more sympathetic to an audience, it is also required to clarify that a transfer of action has taken place and to attribute responsibility for it. It clarifies the logic of the action.

During the 1977 trial of Leonard Peltier for the murder of FBI agents attempting to serve arrest warrants on the Pine Ridge Reservation in South Dakota, prosecutor Lynn Crooks individuated the agents during his closing argument:

Ron Williams and Jack Coler, two young, relatively handsome young men who chose as their life's work, I would assume, or at least part of their life's work, law enforcement, and two young men who were killed in the performance of their duties; but more importantly, they were killed as human beings, not as FBI Agents, not as Government employees, not as anything other than human beings.¹¹⁵

Because seeing Williams and Coler as FBI agents or government employees alone would render them more abstract, Crooks

¹¹² *See id.*

¹¹³ *See Næss, Prototypical Transitivity* at 78.

¹¹⁴ *Id.* at 30.

¹¹⁵ Transcript, *United States v. Peltier*, CR No. C77-3003, at 23:4969–70 (D. Mass. May 13, 2015).

individuated them by naming them and explicitly distinguishing their humanity from their institutional roles. Similarly, during the Tsarnaev trial, prosecutor Steven Mellin individuated the youngest victims of the crime in his closing argument when describing what Tsarnaev saw after placing his bomb on Boylston Street:

When he looked up, what did he see? He saw that he had placed that bomb approximately four feet behind a row of children. Six-year-old Jane Richard, eight-year-old Martin Richard, 11-year-old Aaron Hern, 12-year-old Henry Richard. He was right here. The children were right there (indicating).¹¹⁶

The individuation component of transitivity also relates to nonhuman objects. During prosecutor Joseph Hartzler's opening statement in the Timothy McVeigh trial, for example, he described the damage in vivid terms by individuating the objects of the explosion:

It instantly demolished the entire front of the Murrah Building, brought down tons and tons of concrete and metal, dismembered people inside, and it destroyed, forever, scores and scores and scores of lives, lives of innocent Americans: clerks, secretaries, law-enforcement officers, credit-union employees, citizens applying for Social Security, and little kids.¹¹⁷

Although the explosion's scope prevented Hartzler from individuating every object, he used the proper noun of the building affected, individuated the concrete and metal materials that were separated by the explosion, and enumerated the categories of people affected. He also used the proper names and stories of representative victims elsewhere in his opening:

¹¹⁶ Transcript, *Tsarnaev* at 59:62.

¹¹⁷ Quoted in Seidemann, *In the Interest of Justice* at 260.

The noise from the concussion from the bomb was felt throughout the city, and Helena Garrett, whose son, Tevin, was in the day-care center, she, of course, was across the street in her building. . . . When she heard the blast, she rushed outside and saw that the entire front face of the Murrah Building was missing. The plate-glass windows that the children pressed their hands and faces against were gone. The entire side of the building was gone. She ran to the scene and frantically searched the area for her son. She watched as rescue workers arrived and carried bodies of small children from the building, and she looked to see if any of them were Tevin.¹¹⁸

In this example, besides naming Helena Garrett and her son Tevin, Hartzler again used the building's proper name and individuated the plate-glass windows that the children pressed their hands and faces against. His words painted an indelible and heart-rending picture in the listener's mind.

Conclusion

Transitivity is a central property of language. Through transitivity, we represent transfers of action in which one party encroaches or impinges on another, functioning on the discourse level through a variety of components beyond morphology and syntax. It does not depend on whether a sentence uses the active or passive voice or whether a verb takes an object. Because every legal complaint is founded on one or more transitive actions, understanding transitivity is particularly important to both the theory and practice of law. While additional empirical study is needed to understand how audiences respond to variations in the many components of transitivity and their combinations, existing studies of aspect and agency suggest that they have a significant effect on how audiences construe events, reach legal judgments,

¹¹⁸ Quoted in *id.* at 283.

and award damages. This is so even though there is no objective basis for choosing between perfective and imperfective aspects or between agentive and nonagentive representations of events.

While writing in *Jansson v. Bowen* about the ballot language for California Proposition 8, which would have constitutionally invalidated same-sex marriages, the Sacramento Superior Court remarked that “there is nothing inherently argumentative or prejudicial about transitive verbs.”¹¹⁹ Based on what we know about transitivity, this conclusion is suspect. Transitive verbs may not always be inherently argumentative or prejudicial because they are often not highly transitive. But transitivity understood as a transfer of action that encroaches or impinges on another certainly is argumentative and prejudicial. The petitioner in *Jansson*, an official proponent of Proposition 8, sued the California Secretary of State, claiming that the ballot title, summary, label, and pamphlet of Proposition 8 were argumentative and prejudicial because they described the measure as one that “eliminates [the] right of same-sex couples to marry,” and the verb *eliminates* was “a strongly negative, active tense verb.”¹²⁰ In rejecting this argument, the court reasoned in part that the petitioner had himself described Proposition 8 as a “limit on marriage,” and the court failed to see why the verb *eliminate* was more argumentative than the verb *limit*. From a functional perspective, however, eliminating a right is significantly more transitive than limiting the expansion of one. That was the basic thrust of the petitioner’s argument in *Jansson*, but the court evaded the argument by focusing only on the terms’ syntactic equivalence.

Although this article provides only a brief introduction to the components of transitivity, the examples provided from legal complaints, trial transcripts, judicial opinions, and lawyering

¹¹⁹ *Jansson v. Bowen*, No. 34-2008-00017351, at 4 (Cal. Super. Ct. Sacramento Aug. 7, 2008).

¹²⁰ *Id.*

manuals reveal that the components of transitivity are the locus of many common topics of legal argumentation. Approaching transitivity from a functional perspective takes practitioners beyond the familiar advice of style manuals and offers more precise guidance on how to make arguments strong, forceful, vivid, distinctive, or memorable. And it does even more. It offers unique insights into the structure of legal reasoning by providing a heuristic of action transfers that intersects with principles of law such as the sufficiency of complaints, agency, intentionality, burdens of proof, and damages. Because prototypical transitivity is the prototypical form of a claim for relief in law, it is an essential property of legal discourse that warrants close attention by scholars and practitioners.