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EVALUATIVE ADJECTIVES IN THE PRODUCT LIABILITY CASES ON THE EXAMPLE OF DAUBERT V. MERRELL DOW PHARMACEUTICALS, INC.

The present article is concerned with the evaluative adjectives to be encountered in a case involving the liability for a toxic pharmaceutical product (Daubert v. Merell Dow Pharmaceuticals). In the course of investigation, the comparative background is established in which the law of torts is characterized, specifically product liability in the United States, as an area of law which continues to play a significant role insofar as litigation is much more frequent here than anywhere else in the world. Furthermore, evaluative adjectives are typified as statements related to subjectivism. Although the genre of judgment itself can be characterized by considerable consistency when it comes to structure, it turns out rather difficult to point to some repetitive patterns that judges use in communicating their stance. Thus, one might say that epistemicity cannot be contained in any sort of neat equation that would allow us to determine to what extent exactly the judgment is a product of judge's own opinion, to what extent it represents the 'common sense' of the community and to what extent it subsumes the laws applicable and quoted in a given case.

Keywords: epistemicity, evaluative adjectives, liability for a toxic product, product liability, law of torts, stance-taking techniques

1. Introductory remarks

The present article investigates the evaluative adjectives occurring in the United States court opinion issued in a widely known case, Daubert v. Merrell Dow Pharmaceuticals, Inc., concerning liability for the toxic pharmaceutical product. The pharmaceutical involved in the case was known under the market name Bendectin.

The author decided to review this particular case since it offers a perfect ground for the analysis of the subjective language employed by the American

judges due to numerous controversies and publicity involved throughout the entire proceedings. Being granted a summary trial[1] by the District Court, the case was heard at the Court of Appeals for the Ninth Circuit, which agreed with the decision of the lower instance, concluding that 'the expert opinion based on a scientific technique is inadmissible unless the technique is "generally accepted" as reliable in the relevant scientific community'[2]. In analyzing the case's grounds and circumstances, various jurists have attempted to describe the relationships between the science and the law as two conflicting and irreconcilable domains (cf. Cranor C.F. 2006). The conflict resides first and foremost in the very nature of law versus science. Whilst scientists seek to understand the world as they find it, with all its uncertainty and complexity, law must be based on simplicity and draw clear demarcating lines between specific categories and boundaries. In the words of Schuck (1992):

> Because much law must be predicted, understood, and applied by many ordinary people with limited resources, simplicity is often a compelling legal virtue. Law cannot afford to be as nuanced as the realities it seeks to shape; it necessarily draws lines and creates categories that force many legal decisions into a binary mold; one is either in or out of the category, and it matters a great deal which.

As dispensers of justice, courts need to be aware of the tension between these two institutions. This purported conflict has also led to the establishment of certain criteria of what should be accepted as scientific knowledge in the course of civil procedure. In general, the criteria included theories based on evidence and expert testimony from scientists. If e.g. the claim initiated by the plaintiff had not passed peer review nor was accepted by the scientific community, it could not be considered as valid. Thus, Daubert v. Merrell Dow Pharmaceuticals, Inc. is often said to constitute a precedent for the subsequent cases where the admissibility of scientific evidence is involved.

For the purposes of the present article however, the above case shall serve as a departure point for the investigations concerning stance-taking techniques and evaluative expressions used by the American judiciary. One might gain insight into how the decision-makers approach non-supported scientific claims in determining principles governing evidence admissibility.

Daubert v. Mercell Dow Pharmaceuticals is considered a landmark case that led to a breakthrough in the understanding of what scientific evidence is and how

[1] Summary jury trial is an alternative dispute resolution technique, increasingly being used in civil disputes in the United States. In essence, a mock trial is held: a jury is selected and, in some cases, presented with the evidence that would be used at a real trial. The parties are required to attend the proceeding and hear the verdict that the jury brings in. After the verdict, the parties are required to once again attempt a settlement before going to a real trial.

[2] Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

to interpret it. The main consequence was the exclusion of the so called "junk science" or "pseudoscience", as well as new or experimental techniques and research that were previously deemed admissible. Henceforth, a judge would be bound by some restrictive measures when deliberating upon a case involving scientific proofs. To these factors we may include:

– whether the theory or technique in question can be and has been tested;
– whether it has been subjected to peer review and publication;
– its known or potential error rate;
– the existence and maintenance of standards controlling its operation; and
– whether it has attracted widespread acceptance within a relevant scientific community.[3]

2. Product Liability – Comparative Background

The case described in this article resulted in the 'explosion' of mass tort product liability cases during the 1980s throughout the United States. During the period from 1975 to 1989 the number of actions increased from about 2 400 to about 13 400 whilst the percentage of product liability cases in relation to all civil cases rose from 2% to 5,7% during the very same period. The United States are among the countries with the highest numbers of product liability cases. The reasons for this can be attributed to relatively low fees for filing lawsuits and the availability of class actions (Sautter 2011: 17-32). Additionally, American plaintiffs also receive the highest awards of monetary damages in the world (Reimann 2003: 751-838). It is thus interesting to observe the argumentation patterns that occur in the court judgments in reaction to the 'trend' described. Faced with the ever changing standards and cases that often evade a straightforward application of the rule of precedent, judges resort to various means. However, the rhetorical structures they apply rarely display regular and structured patterns as also evidenced by this analysis.

Daubert v. Merrell Dow Pharmaceuticals, Inc. is an example of the law of torts, specifically the so called toxic torts, or product liability. This section takes a closer look at the law of torts in order to highlight the litigious character of the product liability cases, which is gaining increasing recognition, in particular recently, with the rapid development of technology, medicine, and biotechnology. Product liability should be considered under delicts or "torts", the latter being an Anglo-Saxon term which concerns the responsibility of the wrongdoer, or tortfeasor, who has failed to exercise due care insofar as he/she exposed the injured party to a loss, most often physical injury or intangible harm, pain or

[3] Source: https://www.jdsupra.com/legalnews/expert-witnesses-and-the-daubert-7162871/

suffering. It therefore constitutes a type of involuntary obligation arising not out of the parties' free will (as opposed to voluntary arising out of contracts or unilateral promises) but due to some unintentional or intentional occurrence leading to loss or damage. The *vinculum iuris, or legal tie,* which then emerges as a result of the damage, makes the tortfeasor liable for the injury caused. In the case of product liability, it is the producers, manufacturers and vendors who are held responsible for the danger arisen due to the distribution of products like consumer goods, medical devices, food, prescription drugs, vehicles, aircraft etc.

Product liability, as an area of the law of torts, has grown in importance during the recent decades and several more substantive works have already been dedicated to this issue (cf. Baldwin et al. 1998; Cheesman 2006; Shawn 2006; Cranor 2016). However, it was not until the 19th century that personal injury cases began to be heard by the common law courts. This was due to the Second Industrial Revolution which resulted a in greater mobility of people and products). Before the development of the doctrine of *caveat emptor* (buyer beware), the general principle applied in this type of lawsuits was either to exempt the defendant from liability or to apply the strict liability regime. Thus, there was no such thing as determining or assessing the amount of damages based on the circumstances.

In fact, both the United States as well as the European Union legislations are considered as the leading models on how to enforce liability for hazardous products. It was in 1963 in California that the so called Greenman decision was issued contributing to the imposition of strict liability where the manufacturer was found guilty on grounds of negligence and breach of warranty. Indeed, the number and diversity of product liability cases heard in the United States is by far the greatest when compared with the rest of the world. As claimed by Mathias Reimann (2015), 'In the United States, product liability continues to play a big role: litigation is much more frequent there than anywhere else in the world, awards are higher, and publicity is significant.'

3. The role of judges in delivering justice: two conflicting views

Before proceeding to the discussion on the evaluative adjectives employed in the court opinions related to the case under study, a few remarks will be necessary to present two conflicting views concerning the judge's role in the decision-making process. Since court judgments are concerned with evaluating the conduct of human-beings vis-a-vis the society, they cannot be entirely objective. On the other hand, judgment as a genre has a fixed structure and thus, should follow a given, logical pattern and resemble mathematical equation. Other important components frequently quoted when referring to judicial reasoning is

common sense, socio-economic factors or the ethical perspective. As a result, judges are bound by a certain set of values and customs. Thus, theoretically, there is not much room left for the expression of one's own stance and attitude. Given that, subjectivity would be considered as something undesirable and to be avoided in court judgments. What one obtains in due course is a certain conflict of interests: while as some would like to limit the judge's word to the domain of 'finding what already exists' in the body of previous decisions in analogical cases, others argue that each decision bears 'individual' marks and is barely predictable. In fact, judges' function consists in various tasks. One of them, which takes place even before any interpretation is possible, is the reconstruction of facts or the fact-finding process. Determining the status quo, in particular in cases concerning product liability, is very often hedged with technical expressions, scientific explanations or even instructions of use. This is due to the fact that product liability proceedings almost always require the participation of experts who add elements of medical or technical register to the 'underlying' legalese of a court judgment, e.g. it may contain an accurate report on the injuries (measured in percentages) suffered in the course of the accident for the purpose of calculating the damages due to the victim or testimony as to how to properly operate a specific tool or device. Below an example of such an explanation[7]:

> The general design and function of the throttle control system in the 2001 Ford Ranger is typical of any modern passenger vehicle. The driver controls engine speed by depressing the accelerator pedal, which is linked to the throttle, which, in turn, regulates the amount of air flowing into the engine. When the accelerator pedal is depressed, the throttle opens and engine speed increases; when the accelerator pedal is released, the throttle closes, airflow is restricted and engine speed decreases (Speidel 2006).

What follows the part referred to as fact-finding is the interpretation proper and it is there where we are most likely to find expressions denoting stance.

In summary, we could say that judge's statement represents (in the civil law) an interpretation of the existing norms or, more precisely, the subsumption of facts to suit the particular legal norm or, in the common law, comparing the facts and the existing legal rules formulated in the precedents in order to determine whether this particular rule can be followed or whether a new one should be created. However, a deeper insight into the process of adjudication will reveal that rule-following is not such a straightforward issue and that it requires a careful re-examination and drawing a line between what should be taken as the binding part of the past decisions. Inadvertently, common law judges are often tempted to apply 'a more narrow approach', i.e. an approach that precludes any interpretation that would go beyond the judicial obligation to apply the law in a just and proper manner. That is why, although discarded as a symptom of narrow-mindedness, the formalist attitude continues to have its strict adherents. It

somehow guarantees a safety-valve for the integrity and coherence of the legal system. As observed by Thomas:

> "To the formalist, law (…) possesses an internal coherence and logic, which makes it decisive for the understanding of juridical relationships. This fundamental article of faith that the law possesses an internal validity underlies the formalist's perception that a more narrow approach to adjudication will promote certainty and predictability. It precedes and sustains the unquestioning acceptance and application of rules to particular cases (Thomas 2005: 57)."

The 'rule-followers' often advance a theory that vagueness and uncertainty of legal language leaves them with no other choice but to remain faithful to the past and authoritative decisions. However, a somewhat centered approach is proposed by Schauer who is credited with the term 'presumptive' positivism'. As inextricably linked to formalism, the notion 'positivism' brings to mind ideas usually ascribed to it such as certainty of the written law and the eagerness to follow its letter even contrary to reason or common sense. As the author explains, it does not have to be the case. He considers rules as binding only insofar as they provide a reasonable and optimal solution when confronted with the commonsense approach of the relevant linguistic community:

> "The prescriptive force of a rule can be abandoned if the moral, political or practical cost of applying the rule would be too large and unacceptable. Presumptive positivism 'is a way of describing a degree of strong but overridable priority' so that 'decision-makers override a rule not when they believe that the rule has produced a suboptimal result in this case but instead when, and only when, the reasons for overriding are perceived by the decision-maker to be particularly strong (Schauer 2009: 204)."

The arguments underlying the abandoning of a particular rule need, therefore, to be sufficiently convincing and reasonable. Furthermore, the motivation for change is to be sought for in the extra-linguistic factors such as moral, political or social matters.

4. Theoretical background on epistemicity: definition

Before proceeding to the discussion of the corpus itself, let us take a closer look at the linguistic phenomenon of epistemicity. Epistemic expressions are related to subjectivism since they betray one's stance and point of view. The theories on epistemicity vary in their broadness from the most narrow definitions, based on the grammatical category of mood (Palmer 1986; Huddleston 1988: 80; Bybee and Fleischmann 1995) to the philosophical ones, attempting to view the topic globally and in line with generations of philosophers concerned with 'the

necessary' and 'the possible'. To quote Halliday (1970: 349) and his most representative definition: "[*Epistemic modality*] is the speaker's assessment of probability and predictability. It is external to the content, being part of the attitude taken up by the speaker: his attitude in this case, towards his own speech role as 'declarer'". Palmer (1986: 54-55), in turn, draws our attention to the status of the proposition. As he views it, epistemic modality is "the status of the proposition in terms of the speaker's commitment to it". Bybee and Fleischman (1995: 6) define epistemic modality as the "clausal scope indicators of a speaker's commitment to the truth of a proposition". Keisanen's (2007: 257) definition does not differ much when he describes epistemicity as "those interactional and linguistic means by which discourse participants display their certainty or doubt toward some state of affairs or a piece of information". As observed by von Fintel and Gillies (2007: 33-34) "expressions of epistemic modality mark the necessity/possibility of an underlying proposition, traditionally called the prejacent, relative to some body of evidence/knowledge." Even the general definition, therefore, contains reference to some external source of information, which only proves that there exists a clear relation between epistemicity and evidentiality.

A somewhat more general definition is provided by Nuyts (2000: 21-22) who considers certainty or epistemic modality as a linguistic expression of an estimation of the likelihood that a certain state of affairs is, has been, or will be true. This likelihood might be conceived of as an axis where 0% represents something being totally unlikely to happen and where 100% equals something being bound to happen. As far as categories of epistemic modality are concerned, there is generally no agreed upon nomenclature. When faced with the task of drawing a scale in terms of certainty/uncertainty, some authors (cf. Holmes 1982; Hoye 1997) suggest the following gradation: certainty, probability, possibility. However, as observed by Szczyrbak (2014), there is no consensus regarding the semantic organisation of all the epistemic markers, especially verbs, in a way that would unambiguously differentiate them on the scale from absolute to low certainty. Marcinkowski (2010: 51) is also of the same opinion when he points out that "the strength of epistemic verbs and the commitment conveyed largely varies with their syntactic environment". Therefore, what has to be taken into consideration when evaluating the degree of (un)certainty would be the context in which a given (un)certainty marker occurs. With regard to the scope of the term, Drubig points to its referring to all propositional operators: "Epistemic modals must be analysed as evidential markers. As such, they are part of the extra-propositional layer of clause structure and take scope over all propositional operators" (Drubig, 2001: 44). As far as the scope of the term is concerned, Brezina (2012: 106) proposes to distinguish four different levels at which epistemicity can operate. These include: pragmatics, non-verbal communication, cognition and discourse.

The most common linguistic exponents of epistemic modality would include modal verbs such as: must, might, may, ought, should, can, could, have to, needn't and adverbial expressions such as possibly, probably, certainly, apparently, supposedly, allegedly.

Evaluation, as outlined by Hunston and Thompson (2000), is a slippery notion, which has been given several labels: for example, Martin (2000) and Martin and White (2005) prefer *appraisal*, Conrad and Biber (2000) use the term *stance* while Hyland's *attitude markers*, (Hyland 2005) and some of the linguistic items he describes as hedges can be considered as *evaluative markers*. Evaluation as such includes comparison, subjectivity in a broad sense, value-laden terms and, to a certain extent, modality. In academic writing, evaluation has been the topic of several studies, both written and oral (Swales and Burkes 2003; Anderson and Bamford 2004; Lopez Ferrero and Oliver del Olmo 2008, amongst others).

5. Presentation of the corpus

We shall now analyze the court opinion issued by the United States Supreme Court. The source of the corpus is *Justia Opinion Summary and Annotations* taken from *United States Bound Volumes, October Term, 1992*, the case full name being 'Daubert Et Ux., Individually and as Guardians Ad Litem For Daubert, Et Al. V. Merrell Dow Pharmaceuticals, Inc. Certiorari To The United States Court of Appeals for the Ninth Circuit, No. 92-102. Argued March 30, 1993- Decided June 28,1993'.

Bendectin, a trade name of a drug containing the active substance Doxylamine-pyridoxine, was introduced into the market in 1956 and removed therefrom in 1983 due to many controversies that surrounded its use. The drug was commonly prescribed for the treatment of nausea and vomiting during pregnancy. Following many lawsuits that resulted from the drug's long-term presence on the market, a study was conducted to determine whether the pyridoxine and doxylamine caused birth defects in children exposed in utero. Bendectin was supposed to cause all kinds of fetal malformations and problems including limb and other musculoskeletal deformities, facial and brain damage, defects of the respiratory, gastrointestinal, cardiovascular and genital-urinary systems, blood disorders and cancer.[4] However, an FDA panel concluded that no association between Bendectin and congenital defects had been observed and in 1999, it published a statement determining that:

[4] Cf. article published in New York Times as a result of the decision to withdraw Bendectin from the market: https://www.nytimes.com/1983/06/19/weekinreview/shadow-of-doubt-wipes-out-bendectin.html [last accessed: 29.09.2023]

> the drug product Bendectin, a tablet composed of pyroxidine hydrochloride, 10 milligram (mg), and doxylamine succinate, 10 mg, for the prevention of nausea during pregnancy was not withdrawn from sale for reasons of safety or effectiveness. This determination will permit FDA to approve abbreviated new drug applications (ANDA's) for the combination product pyroxidine hydrochloride, 10 mg, and doxylamine succinate, 10 mg, tablets.[5]

Developing medications for pregnant women suffering from nausea and vomiting became a problem following the Bendectin experience. Aside from legal consequences, the case also contributed to increased fear among patients and healthcare professionals alike that all medications are teratogenic. As observed by Wing et al. (2010), FDA granted approval for just a few drugs which resulted in the use of other, less studied medications.

6. Discussion: evaluative adjectives as types of epistemic markers distinguished for the purpose of the analysis

The epistemic markers analyzed in our corpus display considerable variety. However, due to the limited nature of the study, the author decided to focus exclusively on the evaluative adjectives. Numerous studies have been to date concerned with the study of adjectives that play an important role in argumentation and perform an interpersonal function. According to Tutin (2010) these adjectives are especially relevant in the observation of persuasive strategies used towards the reader and the kind of arguments (novelty, salience, quality, inadequacy, for example) put forward to qualify scientific objects in various disciplines.

An important class of evaluative expressions with which the present analysis will be concerned is predicates expressing various kinds of normative and epistemic evaluation, such as predicates of personal taste, aesthetic adjectives, moral adjectives, and subjective adjectives, among others. As observed by Silk (2019: 1):

> Subjective adjectives are distinguished, empirically, in exhibiting phenomena such as discourse-oriented use, felicitous embedding under the attitude verb 'find', and sorites-susceptibility in the comparative form. A unified degree-based semantics is developed: What distinguishes evaluational adjectives, semantically, is that they denote context-dependent measure functions (evaluational perspectives) – context – dependent mappings to degrees of taste, beauty, probability, etc., depending on the adjective.

[5] Source: https://www.govinfo.gov/content/pkg/FR-1999-08-09/pdf/99-20362.pdf

According to Kerbrat-Orecchioni (1980), subjective, or evaluative, adjectives can be divided into the following sub-classes:

– modal adjectives,
– comment adjectives,
– intensifying adjectives,
– adjectives of importance.

Modal adjectives are those that convey a sense of possibility, necessity, or desirability regarding the noun they modify. They express the speaker's attitude or opinion about the likelihood or appropriateness of the described quality or state. Examples of modal adjectives include "possible", "necessary" and "desirable" The overall number that occurred in the corpus was 16. Below are a few examples:

(1) *Expert opinion which is not based on epidemiological evidence is not admissible to establish causation.*
(2) *Cross-examination, (...), is the appropriate means by which evidence based on valid principles may be challenged.*
(3) *Thus, the animal-cell studies, live-animal studies, and chemical structure analyses on which petitioners had relied could not raise by themselves a reasonably disputable jury issue regarding causation.*
(4) *Uncompromising "general acceptance" test, are the appropriate safeguards where the basis of scientific testimony meets the standards of Rule 702.*

Comment adjectives are used to express the speaker's personal evaluation or judgment about the noun they modify. These adjectives provide subjective opinions or comments about the qualities or characteristics of the noun. Examples of comment adjectives include "beautiful", "boring" and "excellent". The overall number that occurred in the corpus was 28. Below are a few examples:

(5) *The respondent's assertion that they somehow assimilated Frye is unconvincing.*
(6) *The inquiry is a flexible one, and its focus must be solely on principles and methodology, not on the conclusions that they generate.*
(7) *Cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof, rather than wholesale exclusion under an uncompromising "general acceptance" standard, is the appropriate means by which evidence based on valid principles may be challenged.*
(8) *They [the petitioners] responded to respondent's motion with the testimony of eight experts of their own, each of whom also possessed impressive The credentials of the others are similarly impressive.*
(9) *Respondent expresses apprehension that abandonment of "general acceptance" as the exclusive requirement for admission will result in a "free-for-*

all" in which befuddled juries are confounded by absurd and irrational pseudoscientific In this regard respondent seems to us to be overly pessimistic about the capabilities of the jury and of the adversary system generally. Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.

(10) *This is not to say that judicial interpretation, as opposed to adjudicative factfinding, does not share basic characteristics of the scientific endeavor: "The work of a judge is in one sense enduring and in another ephemeral. ... In the endless process of testing and retesting, there is a constant rejection of the dross and a constant retention of whatever is pure and sound and*

Intensifying adjectives are used to amplify or emphasize the degree of a quality or attribute associated with the noun. They make the description stronger and more vivid. Examples of intensifying adjectives include "very", "extremely" and "incredibly". The overall number that occurred in the corpus was 1. Below the example:

(11) *The Court nonetheless proceeds to construe Rules 702 and 703 very much in the abstract, and then offers some "general observations"*

Adjectives of importance are used to highlight the significance or importance of the noun they modify. They indicate that the quality or characteristic being described is particularly noteworthy. Examples of adjectives of importance include "crucial", "essential", and "vital". The overall number that occurred in the corpus was 14. Below are a few examples:

(12) *Yet there are important differences between the quest for truth in the courtroom and the quest for truth in the laboratory.*

(13) *Widespread acceptance can be an important factor in ruling particular evidence admissible, and "a known technique which has been able to attract only minimal support within the community.*

(14) *Its overarching subject is the scientific validity and thus the evidentiary relevance and reliability of the principles that underlie a proposed submission.*

As a linguistic category, evaluative adjectives outnumber other categories such as verb phrases, noun phrases and evaluative adverbs. Overall, evaluative adjectives play a crucial role in conveying the court's assessments, findings, and conclusions, making them a significant category within the language of court judgments. The type which was featured most often in the case under study was comment adjectives. One possible reason that would explain the frequency with which these adjectives occur in the judgments is that judges' decisions are shaped by the society in which they live, being subject to culture, values, and moral

systems. Being exposed to such a familiar framework, they feel justified in using subjective expressions like *absurd, shaky, impressive, irrational*.

As far as the purpose is concerned, in the case of the analyzed judgment, the evaluative adjectives were mostly employed to describe the credibility of witnesses (e.g. “credible", "unreliable", "inconsistent"), assess the strength of evidence (e.g. "compelling", "insufficient", "inconclusive"), express judgments on legal arguments (e.g. "meritorious", "unsubstantiated", "well-reasoned”) or characterize the conduct of parties (“negligent", "intentional", "fraudulent”). However, it is important to note that the specific frequency and significance of evaluative adjectives may vary depending on the jurisdiction, legal system, and the nature of the cases being analyzed within the corpus.

7. Conclusions

The analysis of the corpus leads us to the conclusion that it is comment adjectives that are most commonly employed by the judges. The table below presents the number of evaluative adjectives that occurred in the analyzed judgment with their subdivision into classes.

Table 1: Statistical analysis of the distribution of evaluative adjectives in the corpus

Category	**Total number**
Modal adjectives	16
Comment adjectives	28
Intensifying adjectives	1
Adjectives of importance	14
Total number	**59**

Overall, judges resort to various means to communicate their stance. Thus, one might say, albeit tentatively, that epistemicity cannot be contained in any sort of neat equation that would allow us to determine to what extent exactly the judgment is a product of judge’s own opinion, to what extent it represents the ‘common sense’ of the community and to what extent it subsumes the laws applicable and quoted in a given case. What we can say with certainty is that the expressions reflecting stance are inevitable in the court judgments. Similarly, what the witnesses state in depositions and testimonies will not be marked by categorical expressions but rather will involve a large amount of “ifs” and question marks.

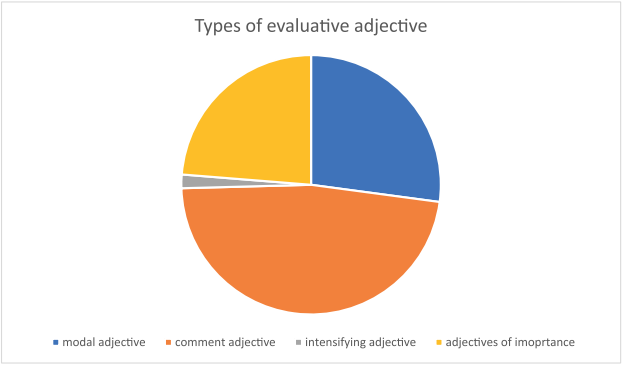

Figure 1: Categories for first round of data analysis

To sum up, although the legislature seeks to determine beyond reasonable doubt, as it were, the boundaries between what constitutes a prohibited act and what remains within the realm of 'lawfulness', it cannot avoid falling victim of various 'traps' of language which abounds in vague and ambiguous expressions understandable only if discussed in a particular context. As already remarked, the dichotomous character of legal discourse as opposed to the 'continual' character of common every day speech gives rise to a 'conflict of interests'. As observed by Kielar (1977):

> The quality of vagueness is considered to be a consequence of the relativity of all classification inherent to names of general character. Classification ensues simplification of much richer objective reality, in which transition zones exist between classes of objects or phenomena to which language signs apply. Fringe elements are the basis of vagueness of words.

Needless to say, further research in the field may give rise to new conclusions and observations that will have repercussions not only for linguistics but also for the law. Identifying "the degree" of epistemicity in the judicial language is tantamount to identifying the discretionary power of the judges. The character of the legal system will be reflected in how much freedom judges enjoy in exercising their prerogatives. If one were to use the economics nomenclature, we could compare it to a free market versus interventionist market. In the case of the former, judgments will display greater degree of epistemicity due to lack of specific structures prescribed by the norms. In the case of the latter, the judge would be constrained in the amount of "personal" aspects allowed to appear in the final and non-appealable version of the judgment.

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