



Divorce as a Performative Speech Act: A Cross-Cultural Study

***Asst. Prof. Hashim Aliwey Mohammed Alhusseini (Ph.D.)**
University of Wasit, College of Education, English Department

Asst. Prof. Nawal Fadhil Abbas (Ph.D.)
University of Baghdad, College of Education for Women, English Department

Asst. Prof. Ahmed Qadouri Abed (Ph.D.)
Translation Department, College of Arts, Al-Mustansiriyah University

ABSTRACT

The focus of this paper is to investigate whether the divorce act is one of the performative speech acts in English and Arabic cultures or not. The researchers assumed that what is regarded performative speech act in one culture might not be so in another. This assumption is applied to the divorce act in both English and Arab cultures. The researchers believe that divorce as a speech act underlies some pragmalinguistic differences in English and Arabic. To manipulate this argument, certain religious and legislative texts extracted from Arabic and English cultures are to be discussed to prove this assumption. To achieve the aim of this paper, the researchers adopt Austin's (1962) interpretation of speech act theory and the concept of Felicity Conditions (FCs). Consequently, the goal of this study is to discuss and compare cross-culturally the divorce act in both languages to identify the similarities and differences between the two languages.

Keywords: Divorce; Speech Act Theory; Performative Speech Acts; Felicity Conditions

1. Introduction

Most of the attempts to define language focus on searching what language is used for, or how it functions within a speech community. To discuss how language functions in any speech community requires making a clear distinction between linguistic form and linguistic function. This distinction is very important because the structure of each sentence may specify a particular function or speech act (Clark and Clark, 1977). Generally, linguistic form is mainly concerned with the syntactic and structural aspects of a language; whereas linguistic function deals with the study of these syntactic and structural aspects in a particular context of situation or in a social context. Here, we can say that the form of the language goes hand in hand with the function or the context of a language. The field of study that deals with connecting between language form and function is pragmatics.

As a matter of fact, one can say that pragmatics is not only a linguistic field of language, but also a social science that aims to wed between language form and language use. Levinson (1983, p.27) defined pragmatics as “the study of deixis (at least in part), implicature, presupposition, speech acts, and aspects of discourse structure”. He (1995, p. 91) added that pragmatics attempts to explain how the same expressions or syntactic forms might have different meanings or interpretations in different contexts. Similarly, Leech (1981; 1983) mentioned that pragmatics is mainly interested to study the relationship between the linguistic meaning and the speech situation. Consequently, we can say that linguists or scholars cannot study or understand language well if it is isolated from its context of situation. This is because in certain situations users of a language may not be able to distinguish between what is said and what is meant; there is no correlation between the form and the deed. This fact inspired philosophers, linguists to develop a theory that concerned with understanding the relationship between what is said and what is meant; this is represented by the Speech Act Theory (SAT) (Cooper, 1973; Van Dijk, 1977).

Speech Act Theory (SAT) as a theory of communication was introduced by the language philosophers J. L. Austin (1962) and Grice

(1957), and developed by many other philosophers and linguists, such as Searle (1969; 1980; 1989), Leech (1983); Vanderveken (1990). This theory focuses on the utterance meaning rather than the sentence meaning. Generally, the basic principle of Austin's SAT is that the utterance of certain words and expressions performs a deed. Thus, Searle (1969;) stated that language is not a matter of saying words or stating facts, but it is part of a theory of action that serves to perform different speech acts (henceforth SAs), such as warning, ordering, swearing, and promising. The performance of SAs is indicated through the use of explicit and implicit performative verbs. In this context, the deeds that are performed by the performative verbs are called performative speech acts. For a performative speech act to be performed appropriately, certain conditions that are called *felicity conditions* (henceforth FCs) should be available for each SA. Consequently, Austin (1962) identified three types of FCs:

(A.1) There must exist an accepted conventional procedure having a certain conventional effect, that procedure to include the uttering of certain words by certain persons in certain circumstances, and, further,

(A.2) the particular persons and circumstances in a given case must be appropriate for the invocation of the particular procedure invoked.

(B.1) The procedure must be executed by all participants both correctly and

(B.2) completely.

Austin (1962) affirmed that the violation of any of these felicity conditions makes the speech act infelicitous and cannot be validly performed. Moreover, most of these conditions are mainly relevant to particular ceremonial and ritual performative acts such as having a husband and wife, naming a ship and baptizing a child. These performative acts are regarded felicitous (i.e. well-chosen and very suitable) if they are performed by pronouncing certain conventional words by fit people in appropriate circumstances.

This paper attempts to deal with the act of divorce whether it can be regarded as a performative SA or not in both English Christian and Arabic Islamic cultures. The study investigates whether there is a one-to-one

correspondence of the act of divorce in both languages in terms of performativity and FCs. It also aims to know whether there are some structural, cultural, religious, social and pragmatic differences in the act of divorce in both languages. To achieve such aims, the paper will analyse some religious and legislative texts in English and Arabic to find out points of similarity and difference between the two languages by adopting Austin's concepts of FCs as a model of analysis.

2. Divorce in Western Culture

2.1 Definition

Most scholars that are interested in social and anthropological studies state that divorce is a matter of formal dissolution or separation of a bond of marriage that contracted between a man and a woman. In this regard, Martin (2003, p. 159) defines divorce as "the legal termination of a marriage and the obligations created by marriage, other than by a decree of nullity or presumption of death". Stark (2005, p. 73) mentioned that "divorce is the legal mechanism through which parties change their legal status from married to single. They are 'free of the bonds of matrimony' and free of marriage's rights and obligations, except as specifically provided in the decree of divorce".

Generally, the act of divorce is very usual in all societies but it is different from culture to culture and from religion to another. This is because each society has its own rules, whether difficult or easy, to make sanctions, constrains, agreements, or prohibitions against the act of divorce. Thus, one can say that societies and cultures have created a large number of ways and rules to legitimize the act of divorce similar to that large number of ways and forms of legalizing the act of marriage. In this vein, Ferraro & Andreatta (2010, p. 224) claimed that "some societies are reluctant to officially sanction divorce, and some may even forbid it. Some societies have no official mechanism for legally dissolving a marriage".

2.2 Causes and Types

Katz (2003) stated that the laws and procedures of divorce in Western countries have faced rapid changes because of the dramatic increase of separation and divorce cases between couples. Such a thing has changed and affected on the fabric and social relations of these societies. Rapoport (2005, p. 2) mentioned that such increasing rates of divorce may be attributed to many reasons such as "diverse facets of modern life: decline in belief, breakdown in family values, unadulterated individualism and pursuit of self-interest, rising expectations about marriage, rising life expectancy, increasing economic independence of women and the empowering effect of feminism".

Conway (2007, p. 10-13) declared that there are certain grounds to perform the act of divorce in a court. These include *adultery, unreasonable behavior, separation, desertion, and grave financial or other hardship*. *Adultery* is illegal voluntary sexual relationship between a man and a woman who are not legally married to each other in which one of them at least is previously married to another person. *Unreasonable behavior* refers to a way in which a husband or a wife has done unreasonable behavior that prevents the other party to live with. *Separation and desertion* is improved when one of the couple leaves his/her partner for at least two years without prior agreement. As for *grave financial or other hardship*, in this case a wife, for example, may claim a divorce that would cause her grave financial hardship because she would lose her husband's post office widow's pension (Conway, 2007, p.13).

Generally, the termination of marriage or divorce between a husband and a wife in Western countries is only done by the court order and it may be referred to it as a divorce decree (Wild, 2006, p. 127). The act of divorce may have different shapes and forms as stated by Wild (2006). These include:

1. *"Divisible divorce or limited divorce*. It is a proceeding in which certain familial issues related to alimony, distribution of assets, or custody of children are reserved or kept for another jurisdiction or under the laws of another state after terminating marriage relation" (Wild, 2006, p. 127).

2. "*Divorce a mensa et thoro. (Archaic. Latin.)* Divorce from bed and board. A proceeding, current in Britain until the nineteenth century, that resulted in the parties remaining married but living separately. The term is still used in a few jurisdictions" (Wild, 2006, p. 127).
3. "*Divorce a vinculo matrimonii. (Latin.)* Common law, meaning, from the bonds of marriage; a form of divorce based on grounds that pre-existed the marriage, which resulted in a legal fiction that the marriage never existed (with the result that any children of the marriage are then considered illegitimate)" (Wild, 2006, p. 127).
4. "*Mail-order divorce.* A divorce received through the mail or otherwise without the presence of the parties in the court granting it. Not recognized in the United States because of the lack of personal jurisdiction" (Wild, 2006, p. 127).
5. "*Migratory divorce.* A divorce obtained by a spouse who moves or travels to another jurisdiction to obtain it" (Wild, 2006, p. 127).
6. "*No-fault divorce.* A divorce granted at the parties' request without any adjudication of wrongdoing (such as abandonment, infidelity, or mental cruelty)". (Wild, 2006, p. 127)

3. Divorce in Arabic Context

Divorce has mainly been discussed by Muslim religious and legislative scholars because it is one of the social problems that face Muslim societies. Divorce has been defined as an instant and future dissolve of the marriage contract by uttering intentionally a certain conventional formula (Al-Tuwaijiry, 2000; Doi, 2002).

Generally, most Muslim societies adopt the Islamic rules (Shariah) in performing the issue of divorce. However, the procedures of divorce may be different from one Islamic school of jurisprudence (Fiqh) to another, such as Maliki, Shafi'i, Hanafi, and Ja'fary, yet most of them agree upon certain conditions, and without which divorce is invalid. The researchers believe that such conditions that are discussed in 4.3 can be regarded as a sort of felicity conditions as mentioned in Austin's (1962) classification of FCs above.

4. Analysis and Discussion of the Data

This study is based on analyzing the selected data qualitatively. This qualitative analysis helps readers to better understand the text as a social phenomenon. The qualitative analysis is based on adopting Austin's (1962) concepts of performative speech acts and felicity conditions. The collected data includes two religious texts extracted from the Holy Quran (Arabic text) and Bible (English text) and two legislative texts extracted from Iraqi personal status law and American family law. The choice of these texts is important to shed light on the socio-cultural aspects of divorce in both Arabic and Islamic cultures and Western and Christian cultures.

4.1 Analysis of Quranic Text: Surat Al-Ahẓāb (The Combined Forces) (33: 49-50)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَعَّوَهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا {49} [سورة الاحزاب: 49]

(O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of 'Iddat have ye to count in respect of them: so give them a present. And set them free in a handsome manner {49}. (Surat Al-Ahẓāb (The Combined Forces) {50}. (33: 49), (Ali, Trans., 1937, pp. 1120-22).

The context of this Quranic text (QT) discusses the matter of divorce in Islamic law. The verbal communication in this text is twofold: God-Muslim believers communication and God-Prophet Mohammed (pbuh) communication. The first point indicates that Muslims should marry Muslim women; and they should determine certain dowry to these women before consummating marriage contract. The dowry, which is called مهر *mahr* or صِداق *ṣidaq*, is one of the basic and obligatory conditions to perform the act of marriage in Islamic Shariah. Its main function is to honour and protect women in case she is divorced or deserted by her husband. Sometimes, a husband may divorce his wife before touching or cohabiting with her. In this case, the wife will be given only a half of the named dowry. When a woman, who has engaged in a sexual intercourse with her husband, is divorced, she

must wait for a period or *'iddah* (waiting period) for about three months before she can marry again. In case there is no sexual intercourse between the spouses, there is no need for the woman to wait her period, but she can immediately engage with another husband (Al-Qurtubi, 1997).

The implied meaning of this QT point indicates that the divorce is allowable in Islamic rule (Shariah) in order to end a marriage contract between husband and wife. However, divorced woman, who consummated a sexual intercourse with her husband, ought to count her period of waiting, *iddah*, and wait for about three months and during which she is not allowed to get married with another man. In the context of this QT, there is no *iddah* for the divorced wife with whom the husband did not consummate a sexual relation after performing the marriage contract.

The context of this discourse refers to the two important social aspects represented by marriage and divorce. Hence, some lexical terms have been used to refer to these two social aspects such as the words *nakah* (marry), and *ماس* *masa* (touch, i.e., euphemism for sexual relation), which refer to marriage relation, and the words *طلق* *talaq* (divorce) and *سرخ* *sarah* (free) which refer to the act of divorce. The structure of the text is expressed in an imperative mode to show the higher status of the addresser. Hence, God commands the believing men to behave gently with their divorced wives by using verbs in imperative form as in *مَتِّعُوهُنَّ* *matti'uhunna* (gratify them or give them a present) and *سَرِّحُوهُنَّ* *sarrihuhunna* (release them).

4.2 Analysis of Biblical Text: Deuteronomy 24:1-4

The English version (NASB) of this biblical Hebrew text is as follows:

[1]“When a man takes a wife and marries her, and it happens that she finds no favor in his eyes because he has found some indecency in her, and he writes her a certificate of divorce and puts *it* in her hand and sends her out from his house, 2 and she leaves his house and goes and becomes another man’s *wife*, 3 and if the latter husband turns against her and writes her a certificate of divorce and puts *it* in her hand and sends her out of his house, or if the latter husband dies who took her to be his wife, 4 *then* her former husband who sent her away is not allowed to take her again to be his wife,

since she has been defiled; for that is an abomination before the LORD, and you shall not bring sin on the land which the LORD your God gives you as an inheritance.] (New American Standard Bible, NASB).

This biblical text (BT), which is part of the Book of Deuteronomy Ch. 24, deals with the regulation of divorce and remarriage in the Hebrew Bible by using some terms relating to these two concepts, such as *wife*, *marry*, *divorce*, and *former* and *later husband*. The context of this (BT) explicitly refers to the law of divorce and remarriage after divorce according to the Mosaic Law. It discusses matters that are related to marriage, divorce, and remarriage. One can explicitly infer that divorce was common in biblical teachings among sons of Israel. Generally, this biblical law affirms that an Israelite man was given the right to divorce his wife if he hated her, or discovered a defect in her body or mind, or found that she had performed a shameful act. All these meanings, which justify divorcing a woman, are related to the biblical Hebrew word *'er-wat*, which has different English interpretations, such as *indecenty*, *nakedness*, *lewdness*, *something wrong*, *uncleanness*, *something improper*, *something objectionable*, *something offensive*, and *unseemly thing*. Whenever a husband finds such unwanted attributes in his wife, he has the right to divorce her according to the Mosaic Law in order to avoid some future evil. Most biblical scholars, such as Kline (1962) and Constable (2015) affirmed that the meaning of these words did not mean that the wife had committed adultery. This assumption was attributed to the fact that if the wife had done adulterous act, then she would not be divorced, but she would be killed by stoning based on the Mosaic Law (Constable, 2015). In this regard, Constable (2015, p. 96) stated that "the reason for the granting of the divorce by the husband, who alone had the power to divorce, was "some indecenty" in his wife (v. 1). This could not have been simple adultery since the Israelites stoned adulteresses".

When the man divorced his wife, he should give her a bill of divorce to legalise her divorce in order to be regarded as a legal permission for her to remarry another man. Thus, without such a certificate of divorce, a divorced woman cannot be able to remarry again (Sprinkle, 1997). After obtaining a bill of divorce, the woman has the right to remarry again. Once her second husband divorced her or died, then it is prohibited to the first husband to remarry her divorced wife. This is because the Bible considers the woman

who marries after her divorce a defiled woman; her remarriage is a form of adultery according to the Mosaic Law. In this regard, Constable (2015, p. 136) said that “A husband could divorce his wife for the flimsiest of reasons in Israel. A divorced woman was free to remarry in Israel. However if she remarried, the law viewed her remarriage as adultery”. As a result of this severe judgement against the divorced woman, the Holy Bible enacted a prohibitive legislation that forbids the wife’s first husband to remarry her divorced wife again because this biblical law considered the first husband as “responsible for her committing adultery since he had divorced her” (Constable, 2015, p. 136). As divorce and remarriage are associated with defilement and adultery, then ignoring this kind of prohibition will be regarded as a kind of sin in the Mosaic Law. One can infer that though divorce was permitted in the Bible, it implicitly indicates that one should avoid divorcing his wife for flimsy causes in order to avoid bringing a sin to his life and land.

With regard to the abovementioned discussion, Prophet Jesus prohibited divorce and remarriage and considered them as a kind of adultery. Thus, Prophet Jesus affirmed this kind of prohibition as mentioned in Matthew 19:9 "And I say to you, whoever divorces his wife, except for immorality, and marries another woman commits adultery (NASB)" and Luke 16:18 “Everyone who divorces his wife and marries another commits adultery, and he who marries one who is divorced from a husband commits adultery” (NASB). This means that unlike the Mosaic Law which permitted divorce and remarriage, divorce is primarily prohibited in the teachings of Jesus. The main idea is make divorce as an inconvenient act that men should avoid to perform it in order to avoid its prohibited consequences. Therefore, a biblical act of prohibition was enacted to do so. Furthermore, divorce is explicitly and implicitly linked with certain unpleasant terms and expressions, such as *hatred*, *indecency*, *defilement* and *abomination*.

4.3 Analysis of Arabic Legislative Text

الباب الرابع: انحلال عقد الزواج- الفصل الأول: الطلاق- المادة الرابعة والثلاثون:

أولاً: الطلاق رفع قيد الزواج بإيقاع من الزوج أو من الزوجة وإن وكلت به أو فوضت أو من القاضي. ولا يقع الطلاق إلا بالصيغة المخصصة له شرعاً.

Alwaqai Aliraqiya (the Iraqi official gazette), Law No. (188) (1959), Issue No. 280, dated December 30, 1959.

Chapter 4 – The Dissolution of Marriage, Section 1 – Divorce, Article 34

1- Divorce means to sever the bond of marriage. It is done by the man, the woman, any authorised representative or the judge. The divorce must be performed according to the Shari'a. (Translated by American Bar Association Iraq Legal Development Project).

This legislative text (LT) is part of the Iraqi (Arabic) Personal Status Law; it attempts to define the issue of divorce from the Islamic and Iraqi (Arabic) point of view. The issue of divorce is one of the social problems that may challenge any kinship system in different societies. One can infer that some important facts may be derived from the context of this text. First, it gives a definition of divorce by stating that divorce is a process of terminating the bond of marriage. In this context, one can say that because marriage is a contract between two parties (male and female), this contract may be dissolved when the two parties are not compatible with each other. Hence, divorce may be regarded as the best legal solution to solve the incompatibility between the spouses. Second, it identifies the person who is responsible for executing the issue of divorce. Here, the legislature identifies four parties that may have the authority to perform the act of divorce. These parties include the husband, the wife, an authorised woman's representative (Wakil وكييل), and the judge. Third, the act of divorce should be performed by uttering specific linguistic and legal formula صيغة شرعية *Sighah* (legal words) and without which the divorce will be void. The usual linguistic and legal formula *Sighah* to perform divorce is uttered by the husband to his wife by saying to her انت طالق *anti Tāliq* (you are divorced) in her presence, or زوجتي

Zawjati X Tāliq (my wife X is divorced) in her absence (Al-Tuwaijiry, 2000).

It is important to state that divorce in Islamic law or Shariah is slightly different from the Iraqi (Arabic) Personal Status Law in determining the authorised person for executing divorce. As mentioned above, there are four parties that may perform the act of divorce, but in Islamic law, uttering the formula of divorce is husband's responsibility only. Thus, the wife, the authorised representative (*Wakil* وكيل), or the judge have no authority to dissolve or terminate the wedlock, but only in certain limited cases (Sābiq, 1983; Doi, 2002; Al-Tuwaijiry, 2000; Schirmacher, 2008). Although divorce is a hateful act in Islam, yet the husband has the right to divorce without providing justifications or informing the court by his divorce. In this regard, Prophet Mohammed (pbuh) asked Muslims not to divorce their wives only when there is no way to avoid it and it should be restricted in very limited circumstances. Therefore, it is stated in the prophetic saying *Hadeeth* that "of all things which have been permitted, divorce is the most hated by Allah" (Doi, 2002, p. 169). Therefore, some Muslim countries attempted to amend their family laws that are related to divorce by introducing some requirements upon husbands to prevent them from divorcing their wives aimlessly (Schirmacher, 2008; Scupin, 2012).

Although the conditions of the validity of *alṭalaq* (divorce) are different from from one Islamic school of jurisprudence (Fiqh) to another, such as Maliki, Shafi'i, Hanafi, and Ja'fary, yet most of them agree upon the following conditions, and without which divorce is invalid. These conditions include the following:

- a. The divorcer should be a sane man; divorce is invalid if done by insane or drunken man.
- b. The divorcer should be an adult man, not a child.
- c. The divorcer should utter the formula of divorce intentionally and willingly, but not compulsorily or jokingly.

- d. Divorce should be performed when the woman is not in her menstruation, and that her husband has not had a relation with her during this period after menstruation.
- e. The divorce should be executed by uttering the correct Arabic formula in the presence of two honest men as witnesses. (Sābiq, 1983; Al-Tuwaijiry, 2000; Doi, 2002; Shirazi, 2013).

Divorce in Arabic language is either طلاق رجعي *talaaq raje'i* (revocable divorce) or طلاق بائن *talaaq ba'in* (irrevocable divorce). الطلاق الرجعي *al-talaaq al-raje'i* (the revocable divorce) is a kind of divorce in which a husband divorces his wife a single divorce and he has the right to approach her wife again during her iddah (period of waiting) without convening a new contract of marriage. الطلاق البائن *al-talaaq al-ba'in* (the irrevocable divorce) is different from the first one in which the husband cannot approach his wife again without performing a new marriage contract (Shirazi, 2013). The irrevocable divorce has different forms and divisions. These forms include the following:

- a. الخلع *Alkhul'* (instant divorce), this form of divorce is a kind of separation between a husband and wife when both or one of them, particularly the wife, hates to continue the martial relationship. If the wife, for example, hates her husband and fears not to fulfil her duty towards her husband, Islam permits her to request for a separation or immediate divorce on the condition of bringing back to her husband the dowry or compensation in order to free her from the bond of marriage (Al-Tuwaijiry, 2000).
- b. الایلاء *Al-eela'* (a husband swearing by Allah to abstain from approaching his wife), here if a husband swears by Allah that he will never approach his wife for a long time, an unlawful act of divorce occurs directly as a result of this oath. Therefore, a husband has no right to approach his wife again, but only if he expiates from his oath either by feeding ten poor persons, or clothing them, or freeing one servant or slave (Doi, 2002).

- c. *الظهار* Al-dhihar (a husband saying to his wife ‘you are to me like the back of my mother’), when a husband says this unlawful words, he performs an oath that commits him not to approach his wife again. If the husband intends to approach his wife again, he ought to expiate from his oath by either freeing a believer from slavery, or fasting for two successive months, or feeding sixty needy persons (Al-Tuwaijiry, 2000).
- d. *اللعان* Al-li’an (mutual imprecation from husband and wife), it is a kind of irrevocable divorce which happens when a husband accuses his wife of marital infidelity but without an explicit proof or four witnesses. When the wife denied this accusation, Islam has made the form of *اللعان* Al-li’an (mutual imprecation from husband and wife) to be as a kind of lawful form of divorce to separate between the husband and wife totally (Shirazi, 2013).

It is worthy to state that Arabs may use, in addition to the explicit formal formula of divorce, some metonymic or figurative expressions that denote indirect declaration of divorce. These include *انت بريّة* anti baryah (you are clear), *انت خلية* anti khalya (you are void), *انت بائن* anti ba’in (you are irrevocable), *انت مسرحة* anti musaraha (you are a free woman), *انت محرمة* anti muharamah (you are forbidden), and *الحقي باهلك* ‘ilhaqi biahliki (go to your family). The utterance of these expressions that denote indirect divorce will not be effective if they said without the existence of an intention to perform the act of divorce. Moreover, this kind of indirect divorce is regarded as a matter of debate among Muslim scholars and schools of Islamic jurisprudence. This is because some of the schools state that this kind of divorce is valid if it is pronounced with an intention of the husband to perform the divorce; whereas other schools declare that this kind of divorce is illegal and void unless the husband pronounces the legal formula of divorce (Al-Tuwaijiry, 2000).

The communicative purpose of this text is to show the procedures of divorce in Arabic and Islamic cultures. Here, the researchers can state that the act of divorce can be regarded as one of the performative SAs in Arabic and Islamic cultures. This statement is based on the view that divorce is performed under certain conditions and without which divorce is regarded

void. These conditions, which are mentioned above, can be regarded as a kind of felicity conditions, and the violation of such conditions would make the divorce null and void. However, the most important ones of these conditions is the utterance of specific linguistic and legal divorce formula الصيغة الشرعية للطلاق *Sighah* (legal linguistic words). Hence, this fact of uttering the words *anti Tāliq* (you are divorced) or *Zawjati X Tāliq* (my wife X is divorced) has been mentioned in this text when the legislator said "لا يقع الطلاق الا بالصيغة المخصصة له شرعا" (divorce cannot be performed only through a determined legal formula".

This LT is a kind of informative genre that seeks to regulate divorce in Iraq. The communicative function of this text is to provide the readers with the concept of divorce and its main conditions. In this context, the legislator attempts to include all the parties who may be involved in performing or executing the act of divorce. Therefore, the decision of divorce could be performed not only by the husband, but also the wife or the judge when certain conditions are available. This indicates that the legislator aims to be away from the Islamic view concerning divorce, which affirms that divorce is mainly achieved through the husband (Rapoport, 2005). This means that the legislature intends to modernise divorce to be compatible with the modern life which calls for equal rights and duties between man and women in all social, political, and economic aspects. Unfortunately, modernising the procedures of divorce to be in agreement with the new life led to a striking increase in the rates of divorce all over the world, including Muslim countries.

4.4 Analysis of English Legislative Text

2013 South Carolina Code of Laws; Title 20- Domestic Relations; Chapter 3- Divorce; Section 20-3-10. Grounds for divorce:

(No divorce from the bonds of matrimony shall be granted except upon one or more of the following grounds, to wit: (1) adultery; (2) desertion for a period of one year; (3) physical cruelty; (4) habitual drunkenness; provided, that this ground shall be construed to include habitual drunkenness caused by the use of any narcotic drug; or (5) on the application of either party if and when the husband and wife have lived separate and apart without

cohabitation for a period of one year. A plea of *res judicata* or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground). (Justia, 2015).

To contextualise this extracted LT, this is part of the 2013 South Carolina Code of Laws. This text discusses divorce according to the civil law in this state, specifically, and in the United States generally. The legislature affirmed that divorce is performed on the basis of some grounds and without which divorce is void. These grounds include adultery, desertion for a period of one year, physical cruelty, and habitual drunkenness. This indicates that these grounds are the basic requirements that should be provided from the spouse and proved by the court in order to fulfil the procedures of divorce. Thus, one can infer from the context of this text that the act of divorce in this state is conditioned by the availability of these grounds; otherwise divorce is invalid. Consequently, spouses should either wait the procedures done by the court for a long time or should provide the court by themselves with clear proofs that such conditions are actually existed for the purpose of getting a divorce (Mechoulan, 2006).

Generally, this LT is mainly related to investigate simultaneously two interrelated kinship concepts represented by *marriage* and *divorce*. They are interrelated because both concepts are located and classified within the field of kinship, and if there is no marriage, there will be no divorce. The concept of marriage is meant to unite and bind two persons; whereas divorce is meant to break and separate two persons from the bond of marriage. Semantically speaking, *divorce* is antonyms to *marriage*. In this context, Stark (2005) defined divorce as a “legal mechanism through which parties change their legal status from married to single. They are ‘free of the bonds of matrimony’ and free of marriage’s rights and obligations” (p. 75). Furthermore, he explained the issue of relatedness between marriage and divorce by saying:

the availability of divorce has been related to the role of marriage in a particular society. When marriage was a means of forming alliances among families, for example, divorce was unknown in the Western world. When marriage served a larger societal purpose, the couples’ interests were secondary. Once companionate marriage became the norm; that is, when people began to marry for love, divorce became easier because there were no

overarching societal interests at stake. Divorce may be adversarial or by consent. When divorce is adversarial, or contested, one party asserts that the other is responsible for the breakdown of the marriage. (Stark, 2005, p. 76)

Here, one can say that marriage and divorce go hand-in-hand if they are associated with some social problems such as adultery, drunkenness, bad behaviour, and desertion.

This American LT, which specifies the conditions to perform divorce in South Carolina State, has an affinal relationship. Divorce is regarded as one social aspect of marriage relationships that has a serious affect on kinship relations. Thus, each society has its own rules to regulate the issue of divorce. In this context, the legislature imposes some conditions that may give the spouses a chance to reconsider or reconcile, or even withdraw the petition of divorce from the court. Nichols (2012) stated that in American civil law, both the husband and wife have the right to petition the court for divorce if these conditions exist in any one of the spouse. Thus, divorce cannot be performed by the husband or wife alone, but it needs an agreement from the court to do so.

Although divorce is abominable in the Holy Bible, particularly in teachings of Jesus, one can observe a dramatic increase in the divorce rates in most of Western societies. Sociologists attributed such increase in the divorce rates into different social, religious, and political causes, such as breakdown of kinship and familial relations, decline in religious belief, legislations of unnatural forms of marriage, and the random launching of the personal liberties that are against the social conventions (Rapoport, 2005; Mechoulan, 2006).

The field of this American LT, which is part of South Carolina Code of Laws, presents that the domain of this text includes a legislative law that is concerned with the issue of divorce in this state. As divorce is closely associated with marriage, certain lexical items that are connected with such social domains have been identified. These terms include *divorce*, *bond of matrimony*, *adultery*, *husband*, *wife* and *cohabitation*. One can observe that the act of divorce requires the availability of certain conditions to perform it; otherwise divorce cannot be achieved or granted by the court. Thus, these



conditions are clearly known and defined to the audience or addressees. It appears that by enforcing such conditions, the legislature intends to slow down the procedures of divorce in order to make the spouses reconsider their final decision of divorce or cancel it totally.

Generally, the communicative purpose of this text is to provide the audience with certain instructions that clarify the procedures of divorce in this American state. This LT reveals that divorce in South Carolina state can only be performed by the agreement of the court; it is not a husband's or wife's right to perform it. This means that there is no linguistic formula to be uttered by the spouses to implement divorce; it is a matter of filling certain legal documents to be signed by both husband and wife in front of a judge or an authorised person (Nichols, 2012). This fact indicates that divorce cannot be considered as a performative SA because there is no specific linguistic formula to perform this act.

5. Conclusions

Based on the textual analysis of the above texts, it was found the following concluding remarks:

1. In both cultures, the issue of divorce is regarded as the opposite direction of the concept of marriage. This is because marriage is to unite two persons in a legal bond; whereas divorce is to break this legal bond of marriage.

2. It was concluded that divorce in Islamic law (Shariah) is the husband's right to utter the legal formula صيغة شرعية *Sighah* (legal words) that has an illocutionary force to perform the act of divorce. Thus, it does not necessitate the approval of the wife or the court to perform the act of divorce.

3. In Arabic Iraqi LT and most Arab countries, the performance of divorce is not only restricted to the husband himself, but also produced by the wife, an authorised representative (*Wakil* وكيل), or the judge have no authority to terminate the wedlock.

4. *Talaaq* or divorce has various kinds and divisions in Islamic and Arab cultures, such as طلاق رجعي *talaaq raje'i* (revocable divorce), طلاق بائن *talaaq ba'in* (irrevocable divorce), الخلع *Alkhul'* (instant divorce), الايلاء *Al-eela'* (a husband swearing by Allah to abstain from approaching his wife), الظهر *Al-dhihar* (a husband saying to his wife 'you are to me like the back of my mother'), and اللعان *Al-li'an* (mutual imprecation from husband and wife). Generally, each type of divorce has its own conditions and context that is different from each other.

5. Pertaining to the pragmatic point of view, the researchers can state that *Talaaq* or divorce is regarded as one of the performative SAs. This claim is based on the view that each SA has three simultaneous forces or acts, that are represented by locutionary act (verbal act), an illocutionary act (the force or the act itself intended from the verbal act), and a perlocutionary act (the result or the function fulfilled from performing the act). In this context, divorce in Arabic language is performed by uttering a certain linguistic formula, i.e., انت طالق *anti Tāliq* (you are divorced), (locutionary act), which has an illocutionary force of divorcing a wife, and the result of such an act is to

break the bond of marriage. The illocutionary act of divorce is expressed and performed in terms of certain conditions that can be regarded as a kind of felicity conditions. These conditions are fundamental to perform the act of divorce correctly and without which divorce is illegal and void. The researchers believe that such conditions are deliberately imposed in order to let the divorcer thinks deeply before divorcing his wife.

6. Pertaining to the issue of divorce in biblical text, the analysis has shown that divorce is not easy to perform in Christian culture because it requires certain conditions to make it valid. The biblical views about divorce showed a reluctant acceptance to perform the act of divorce. In this regard, in order to warn people from divorcing their wives, Prophet Jesus regarded divorce as a kind of adultery, as mentioned in Luke 16:18, Jeremiah 3:8, and Matthew 19:8. However, in other biblical contexts as in Matthew 5:31 and Deuteronomy 24:1, divorce is permitted on a condition that a man should hand his wife a written document or certificate that verifies the act of divorce. This written document frees the wife from the bond of marriage and be able to remarry another husband.

7. In American LT, divorce is permitted on the basis of some grounds and without which divorce is invalid. These grounds include adultery, desertion for a period of one year, physical cruelty, and habitual drunkenness. To complete the procedures of divorce, the spouse should claim and present these grounds to the court. Then, the court investigates these grounds to decide whether they are valid or not to perform the act of divorce.

8. Pragmatically speaking, the researchers can state that divorce in American and Western English cultures cannot be regarded as a performative SA because there is no specific linguistic formula to perform divorce. Thus, one can conclude that divorce is not an easy task to get if the couple fails to prove the availability of one of these grounds. The other point is that divorce requires the consent of both parties, i.e., husband and wife, as well as the court in order to perform the act of divorce.

9. It was found that divorce in both languages is associated with certain unpleasant concepts or terms that are related to hatred. Thus, the lexical items used to refer to the issue of divorce are noticeably very harsh, particularly



those that describe the status of a divorced woman who is described as an *indecent, defilement; abomination, and a sign of sin*. The researchers believe that the objective of the use of such terms is to make the act of divorce a hateful act. Such use could also be an attempt to discourage men from divorcing their wives, and, at the same time, to advise wives to be more obedient to their husbands to avoid the act of divorce between spouses.

10. The large number of divorce kinds and the higher divorce rates in both societies require a depth study about the procedures of divorce in order to provide some social, religious, and economic solutions to avoid doing this hateful act that threatens the structure of societies. Therefore, another sociolinguistic comparative study should be performed to deal with the effect of divorce on the forms of kinship in certain cultures to determine the linguistic and social forms of kinship.



References

Ali, A.Y. (trans.) (1937). *The Holy Quran: Arabic Text with an English Translation and Commentary*. Lahore: Ripon Printing Press.

Al-Qurtubi, A. A. A. M. (1997). *al-Jamic li Ahkam al-Qur'an*. 20 volumes. Beirut: Dar al-Kitab al-cArabi.

Al-Tuwaijiry, M. B. I. (2000). *The book of Nikah*. Riyadh: Cooperative Office for Call and Guidance at Buraidah, King Fahd National Library Cataloging -in- Publication Data.

Al-waqai Aliraqiya (the Iraqi official gazette), Law No. (188) (1959), Issue No. 280, dated December 30, 1959.

Austin, J., (1962). *How to Do Things with Words*. Oxford: Oxford University Press.

Clark, H.H., & Clark, E.V. (1977). *Psychology and language*. New York: Harcourt, Brace & Jovanovich.

Constable, T. L., (2015). *Notes on Deuteronomy*. Sonic Light: <http://www.soniclight.com>

Conway, H. L. (2007). *Family Law (Key Cases)*. Great Britain: Hodder Education, Hachette Livre UK,

Cooper, D. E. (1973) Philosophy and the Nature of Language. London: Longman Group Ltd. EBD on Teacher Instructional Behavior. Preventing School Failure, 38(3), 35-

Doi, A. R. I. (1984). *Shari'ah: The Islamic Law*. Kuala Lumpur: A.S. Noordeen.

Ferraro, G. & Andreatta, S.(2010). *Cultural Anthropology: An Applied Perspective*. 8th Edition. Belmont: Wadsworth, Cengage Learning.



Grice, H.P. (1957). *The Philosophical Review*. Vol. 66, No. 3., pp. 377-388.

Justia (2015) [Online]. [Accessed 8th August 2015]. Available from World Wide Web: <https://www.justia.com/>.

Katz, S. N. (2003). *Family Law in America*. New York: Oxford University Press, Inc.

Kline, M. G. (1962). —Deuteronomy, in *Wycliffe Bible Commentary*, ed. by C.F. Pfeiffer and E.F. Harrison. Chicago: Moody Press, 1962, pp. 155204, 459490.

Leech, G.(1983). *The Principles of Pragmatics*. Longman Group: London.

Levinson, S.C. (1983). *Pragmatics*. Cambridge: Cambridge University Press.

Levinson, S. C. (1995). Three levels of meaning. In F. Palmer (Ed.), *Grammar and meaning: Essays in honour of Sir John Lyons* (pp. 90-115). Cambridge University Press.

Martin, E. A., (2003). *Dictionary of Law (Oxford Dictionary of Law)* (Oxford Paperback Reference). Oxford: Oxford University Press
Nanda, S. & Warm, R. L. (2007). *Culture Counts: A Concise Introduction to Cultural Anthropology*. 2nd ed. Belmont: Wadsworth, Cengage Learning.

Mechoulan, S. (2006). Divorce Laws and the Structure of the American Family. *The Journal of Legal Studies*, Vol. 35, No. 1 (January 2006), pp. 143-174.

Nichols, J. A. (2012). *Marriage and Divorce in a Multicultural Context Multi-Tiered Marriage and the Boundaries of Civil Law and Religion*. Cambridge, New York: Cambridge university press.

Rapoport, Y. (2005). *Marriage, Money and Divorce in Medieval Islamic Society*. New York: Cambridge University Press.

Sābiq, al-Sayyid (1983). *Fiqh al-Sunnah*. Vol. 2. Beirut: Darul-Fiker for printing and Publication.



Schirmacher, C. (2008). Islam and Society Sharia Law – Jihad – Women in Islam Essays. The WEA Global Issues Series, Volume 4. Bonn: Verlag für Kultur und Wissenschaft Culture and Science Publ.

Scupin, R. (2012). Cultural Anthropology: A Global Perspective. 8th ed. Boston: Pearson.

Searle, J.R.(1969). Speech Acts: An Essay in the Philosophy of Language. Cambridge: Cambridge University Press.

Searle, J., (1980). Speech Act Theory and Pragmatics. Dordrecht: D. Reidel Publishing Company.

Searle, J. R. (1989). How Performatives Work. In: Linguistics and Philosophy. Kluwer Academic Publishers. Printed in the Netherlands.

Shirazi, G. A. S. S. H. (2013). Islamic Law: Handbook of Islamic Rulings on Muslim's Duties and Practices. Washington: Fountain Books, in Association with Imam Shirazi World Foundation.

Sprinkle, Joe M. (1997). Old Testament Perspectives on Divorce and Remarriage. *Journal of the Evangelical Theological Society* 40:4: PP. 529-50.

Stark, B. (2005). *International Family Law: An Introduction*. Great Britain: Ashgate Publishing Limited.

Vanderveken, D.(1990). Meaning and Speech Acts : Vol.1, Principles of Language Use. Cambridge: Cambridge University Press.

Van Dijk, T. (1977). *Text and Context* . London: Longman.

Wild,S. E., (2006). Webster's New World Law Dictionary. Canada: Wiley, Hoboken, NJ.