COUNTERFACTUAL CONDITIONALS  IN ARGUMENTATIVE LEGAL LANGUAGE IN DUTCH

Nele Nivelle

Abstract

Legal argumentation is intended to resolve a difference of opinion between two or more legal parties by determining what are the facts in a case and finding an appropriate legal interpretation for these facts. Some of the discussion moves in legal argumentation take the shape of counterfactual conditionals (CTFs). CTFs are conditionals with an antecedent that is implicated to be false, not corresponding to the facts, and they occur in a number of argumentative contexts and argumentation techniques. This paper gives a structured overview of how such non-fact-based CTFs can contribute to resolving a legal and fact-centered difference of opinion. It does so by presenting a bottom-up corpus-based typology of CTFs in lawyers’ conclusions and in judgments in civil cases heard by Dutch-speaking Belgian courts of law. This typology is based on linguistic and pragmatic factors, such as the status of the facts that are referred to in the antecedent, the nature of the relation between antecedent and consequent, and the relation the CTF bears to the argumentative, situational and legal context.

Keywords:  Counterfactual conditionals; Argumentative legal language; Conditio sine qua non-test; Echoic antecedent; Reductio ad absurdum; Causation; Dissociation.

Introduction

Counterfactual conditionals (CTFs) are conditional constructions like (1), in which the antecedent “is interpreted to be ‘contrary to fact’” (Declerck and Reed 2001: 13). The example is taken from the plaintiff’s argumentation in a law suit about a traffic accident. The plaintiff hypothesizes about the defendant not having failed to yield way, whereas in fact the latter has failed to do so.

(1) If the defendant had not failed to yield way, the accident would not have happened.

This paper focuses on CTFs in argumentative legal texts, such as lawyers’ conclusions and court sentences. In the context of a law suit, legal argumentation is considered to be part of a critical discussion intended to resolve a difference of opinion between two or more legal parties (see Van Eemeren and Grootendorst 2004). As such, it is concerned not only with how the facts in a case should be interpreted legally (see Feteris 1994: 5-11), but often also with determining what those facts are, as legal parties frequently disagree on that topic. This paper addresses the question in what way essentially non-fact-based CTFs contribute to resolving a legal, primarily fact-centered difference of
opinion. It presents a functional typology of CTFs, based on data from civil cases heard by Dutch-speaking Belgian courts of law.

1. CTFs: A brief overview

CTFs have been studied from different angles in the humanities. Since reviewing all the different traditions would be beyond the scope of a single paper, this section provides an overview of the literature on CTFs that is directly relevant to a discussion of their use in legal language, mainly from philosophical-logical studies, linguistics, legal theory and argumentation theory.

Ever since Goodman’s (1947) seminal article, the problem of CTFs has been a much debated topic in philosophical logic. CTFs indeed pose a problem when treated in terms of classical propositional logic, in which conditionals are interpreted as material implications with a corresponding truth table. According to this table, all conditionals with a false antecedent are necessarily true, which de facto implies the truth of all CTFs. Intuition, however, tells us that two contrary CTFs, such as \( a \) and \( b \) in (2), cannot simultaneously be true. More generally, not all CTFs can be true. Philosophical logicians since Goodman have been developing analytical heuristics to make it possible to distinguish true from false CTFs, or plausible from less plausible ones.

(2) a. If the vase had fallen, it would have broken.
   b. If the vase had fallen, it would not have broken.

Both Goodman (1947) and Rescher (1961) propose two parameters that are crucial for the plausibility and the function of a CTF, viz. the interpretation of the antecedent and the connecting principle (infra) between antecedent and consequent. First, they distinguish between counterfactual antecedents with a clear interpretation and those that are ambiguous.\(^1\) Two examples should clarify the meaning of this parameter. The antecedent in (3) might be uttered by a teacher in physics while explaining his students the mechanisms involved in lighting a match. In one test-case scenario, the teacher might describe various factors, such as the spherical circumstances and the amount of oxygen in the air, but not scratch the match, and conclude that the match does not light that way. It is, however, quite easy to imagine another scenario in which the same teacher in the same room actually scratches the match, like in (3). Hence, it is not impossible to interpret what elements should be maintained in the teacher’s counterfactual scenario, and what element should be replaced by a counterfactual alternative – viz. only the scratching.

(3) If the match had been scratched, …\(^2\)

Whereas the antecedent in (3) has only one possible interpretation, (4) may be somewhat more problematic to interpret. More precisely, it may be unclear to the interpreter what information about Plato he is expected to include or exclude in construing the counterfactual scenario. It is generally assumed, for example, that Plato

---

1 Rescher refers to counterfactual antecedents with the term belief-contravening suppositions. Henceforth the term counterfactual antecedent will be used.
2 Example based on Goodman (1947: 116).
witnessed Socrates’ trial. Thus, the interpreter might not know whether he is expected to import this element in Plato’s biography into the counterfactual scenario, and hence to imagine Socrates living in the Middle ages as well.

(4) Suppose Plato had been living during the Middle Ages, …

Surely examples (3) and (4) are extreme cases. (3) is presented as taken from a test-case scenario, in which it is easy to separate constants from variables. In (4), however, there is too little information inferable from the context for the interpreter to resolve the ambiguity. Goodman and Rescher both indicate that CTFs with antecedents that are easily interpretable can be evaluated for plausibility or truth value, whereas CTFs with antecedents with an ambiguous interpretation cannot. While the former are used to put forward a true or plausible proposition, the latter are said to serve expressive or rhetorical purposes.

A second factor Goodman and Rescher use as a parameter to distinguish between various types of CTFs is the relation that binds antecedent and consequent. Goodman proposes the term connecting principles to refer to “the general statements that enable us to infer the consequent on the basis of the antecedent and the statement of relevant conditions” (1947: 122). He uses that parameter to distinguish between CTFs supported by a connecting principle, and those that are not. The connecting principle underlying example (5) is a kind of physical law like “Every match that is scratched, well made, dry enough, in enough oxygen, etc., lights” (1947: 122). Based on this fact, Goodman concludes that the CTF in (5) is true. The CTF in (6) might be uttered by a person who remembers that on V-E day – i.e. Victory in Europe day – every coin in his pocket happened to be silver. Days, or even years after V-E day, this person might be holding a penny \( P \) in his hand and produce the CTF in (6), presenting on the one hand an analogy concerning the pocket content, and on the other a contrast between V-E day and today. Contrary to example (5), this CTF sounds rather paradoxical, as pennies are known to be made of copper. Goodman attributes this paradox to the absence of a supporting connecting principle in (6). Rather, the reasoning underlying (6) is something like “Everything in my pocket on V-E day was silver” (1947: 123). Whereas the connecting principle underlying (5) has the character of a causal law, the reasoning on which (6) is based seems to have the character of a contingent fact. Goodman concludes that “the truth of a counterfactual conditional thus seems to depend on whether the general sentence required for the inference is a law or not” (1947: 123).

(5) If the match had been scratched, it would have lighted.

(6) If \( P \) had been in my pocket on V-E day, \( P \) would have been silver.

---

3 Example from Rescher (1961: 181).

4 These relevant conditions consist of circumstances that are to be taken in conjunction with the counterfactual antecedent as the basis for inferring the consequent. In if the match had been scratched, it would have lighted, the relevant conditions are (i) in the presence of a sufficient amount of oxygen (ii) if there is not too much wind (iii) under normal spherical circumstances. Goodman acknowledges that the connecting principle in a CTF is not entirely unrelated to the interpretation of the counterfactual antecedent, but he treats them separately as there are specific new problems connected to it.

5 Example from Goodman (1947: 116).

6 Example from Goodman (1947: 122).
In addition to the classical system of propositional logic dealt with above, there is a second domain within the realm of philosophical logic to which CTFs are of special interest, viz. the counterfactual approach to causation. The simple counterfactual approach defines \( a \) as a cause of \( c \) if but for \( a \), \( c \) would not have happened. As noted by Lewis (1973, 2004) and Collins (2004), this definition will do for very simple cases of causation, but it does not hold in cases of causal overdetermination, i.e. if there is more than one cause present leading to the same effect, and each cause in itself would have caused the effect. Suppose, for example, that two men \( X \) and \( Y \) shoot another man \( Z \) simultaneously. It is clear that \( Z \) would have died, even if \( X \) had not shot, and likewise if \( Y \) had not shot. Still it is undesirable to conclude that neither \( X \)'s nor \( Y \)'s shooting is a cause of \( Z \)'s death. For that reason Lewis (2004), Collins (2004), and others (see Collins et al. 2004) developed a more sophisticated counterfactual approach to causation.

Causal overdetermination and other problems involved in the simple counterfactual approach to causation are applied to a legal setting in the legal philosophical work *Causation and the Law* by Hart and Honoré (1959) in a chapter on causation and *sine qua non*. The sine qua non-test is used in law to determine whether a fact, event, or the absence of it was a cause of a damage or harm. If without the fact, event, or absence of it the damage or harm would not have existed, it is said to have been a cause of the damage or harm.

Whereas some legal systems combine the sine qua non-test with a notion of proximate cause,\(^7\) Belgian legislation states clearly that *any* fact, event or absence of it that is wrongful and that is a condicio sine qua non for a particular damage is a cause of that damage (Van Quickenborne 1972; Bocken 1988, 2002 Dalcq 1996; Van Gerven and Covemaeker 2001). This legal principle is referred to as the doctrine of equivalence (DoE). As conditios sine qua non typically materialize in CTFs, the DoE requires the truth of the CTF that links a wrongful act or event to a damage as proof of a causal relation between wrong and damage, and, hence, of legal responsibility of the party to whom the wrongful act or event is to be ascribed.\(^8\) In other words, CTFs are used as arguments to prove causation and liability. As is to be expected from Hart and Honoré's observation that the (apparent) truth of CTFs is not always a reliable indicator of causation, the application of the DoE often leaves ample room for discussion in Belgian courts of law.

Another argumentative use of CTFs has been studied and described in argumentation theory. In this use, it functions in a form of reasoning commonly referred to as *reductio ad absurdum*. Originally, this term was used to refer to geometrical reasoning with the purpose of demonstrating the truth of *A*, starting from the assumption that *A* is false, and then deducing consequences that are incompatible with what is

---

\(^7\) A *proximate cause* is an event sufficiently related to a legally recognizable injury to be held the cause of that injury.

\(^8\) Legal research (Broda-Bahm 2000, 2001; Spellman and Kincannon 2001; and others) and experimental psychology (see Kahneman and Tversky 1982; Macrae, Milne and Griffiths 1993; Turley, Sanna and Reiter 1995; and others) study the effect of using CTFs on jurors’ perception of responsibility, guilt, and blame. These studies indicate that CTFs supposing the wrong to be absent in the antecedent, and deriving more desirable consequences than in reality in the consequent (e.g. *If that drunken driver had not neglected the stop sign, my client would have had her whole life in front of her*) evoke an emotional response from the jury, which leads them to attribute more responsibility, guilt and blame to the party responsible for the wrong. This literature is not elaborated on here, since it focuses on jury persuasion, which is not an issue in Belgian civil cases, since law suits in Belgian civil courts are decided on by professional judges and do not involve juries.
already known and accepted. A broader use of the term consists in “temporarily accepting a statement contradictory to that one wishes to defend, deducing its consequences, showing their incompatibility with what is accepted on other grounds, and thereby inferring the truth of the proposition being defended” (Perelman and Olbrechts-Tyteca 1969: 206). This is exactly what happens in the CTF in (7), put forward by a lawyer defending a man who is accused of having murdered his mother. In the antecedent the lawyer assumes the son did kill his mother, and in the consequent he derives a consequence which is evidently false – the son’s clothes were in fact not bloodstained. This incompatibility leads to the interpretation of the antecedent as false, viz. the son did not kill his mother.

(7) If the son had killed his mother, his clothes would have been bloodstained.

2. Purpose

In summary, the propositional-logic accounts by Goodman and Rescher proposed two parameters to distinguish between types of CTFs. Moreover, research into causation (philosophical logic and legal theory) and the reductio ad absurdum form of reasoning (argumentation theory) has shown that CTFs are used to serve specific argumentative purposes. However, the result of the corpus-based study reported on in this paper suggests that more types and functions of CTFs can be distinguished in legal discourse. The aim of this paper is, therefore, to present a systematic, functional, and bottom-up typology of CTFs. To this end, the first parameter proposed by Goodman and Rescher will be applied to the concrete legal norms of the courts at issue, and the second parameter will be defined in syntactic-semantic terms. Finally, for each of the combinations of the parameters, this paper investigates the function of the CTF in their specific argumentative, situational and legal context.

3. Parameters

Despite the interesting theoretical parametrization in Goodman and Rescher (section 1), applying these parameters to CTFs is not without methodological problems. Notably, the main problem concerns the operationalization of the parameters. There exists no unit with which one can measure the degree in which it is clear in what respects a counterfactual antecedent differs from reality, or the degree of general validity of the connecting principle between antecedent and consequent. For that reason these parameters are given a pragmatic interpretation, dependent on the legal, situational and argumentative context and linguistic features of a CTF.

First, the interpretation of the antecedent is linked to the specific characteristics of the treatment of facts in legal cases. Legal parties can either agree or disagree on what the litigious facts are in a case. There are norms of evidence that stipulate for each legal domain what information is accepted as factual in a case, and is hence beyond discussion, and what information remains to be proven or can be questioned. The norms

---

9 Perelman and Olbrechts-Tyteca (1969: 206) refer to this broader sense of reductio ad absurdum as quasi-logical argumentation by the ridiculous.
of evidence in civil cases lead the court to accept information that is put forward by one legal party and that is not questioned by any of the opposing legal parties. On the other hand, if a legal party presents information that is later on questioned or denied by an opposing legal party, the civil court decides autonomously and on the basis of the argumentation put forward by the respective legal parties what it accepts as the litigious facts in the case at hand. The antecedent in (8) is taken from the plaintiff’s argumentation in a law suit in which the indictment claims the failure of an obstetrician – viz. the defendant – to refer his patient to a clinical geneticist. As this claim is not contested in the defendant’s conclusions, it is considered an established fact by the court. (9) is taken from the argumentation of a wholesale fruit merchant against a customer who refuses to pay for a batch of apples, which the latter claims to have been infected with the apple disease Scald on delivery. In his conclusions the merchant denies the apples were infected with Scald at the time of delivery. Because of these contrary statements, the infection of the apples on delivery is a fact that is under discussion and it is a matter that is decided on by the civil judge. On the basis of this first parameter, a distinction is made between CTFs with an antecedent supposing the opposite of facts that are agreed on by the legal parties, and CTFs with an antecedent supposing the opposite of facts that are under discussion. This parameter is based on the legal-theoretical norms of evidence in the domain of civil law and the concrete situational context of the law suit.

(8) If the obstetrician had referred the patient to a clinical geneticist, ...
(9) If the apples had been contaminated with Scald, ...

The second logical parameter concerns the connecting principle underlying a CTF. In order to arrive at a heuristic useful to describe CTFs in a corpus, it would not be helpful to develop a number of ad hoc criteria to distinguish between real connecting principles and contingent facts. However, the connection between antecedent and consequent can be brought into account if evaluated from a linguistic perspective. This connection is either of a purely conditional or of a concessive conditional nature – each variant having its own typical linguistic markers. In Dutch, purely conditional subclauses are most typically introduced by conjunctions as als or indien, or they have inverted word order. They indicate what condition applies for the realization of the event or action expressed in the verb complex of the main clause (see Haeseryn et al. 1997: 1210). Concessive conditional subclauses on the other hand are typically introduced by zelfs als, ook als, (zelfs/ook) al, or with purely conditional als combined with a focus particle like ook or nog in the main clause. The concessive conditional subclause marks a condition which, contrary to expectation, is not relevant to the realization of the event or action expressed in the verb complex in the main clause. This syntactic and semantic feature is used as a second parameter for distinguishing between types of CTFs in the data.

The first two parameters account for aspects of the syntactic form, the semantics, the situational and the legal context of the CTF. As this study aims at developing a functional typology of CTFs in argumentative legal texts, the CTFs are additionally analyzed within their specific argumentative context. More specifically, they are identified as fulfilling a particular argumentative function, i.e. as defending or rejecting a certain type of standpoint or argumentation. On the basis of combinations of these

---

10 This enumeration of linguistic markers of conditionality or concessive conditionality intends merely to present the most typical realizations, and by no means pretends to be exhaustive.
parameters, supplemented with in-depth analysis of the argumentative function of the CTFs, this study intends to offer an overview of the various functions a CTF can fulfill in an attempt to resolve a legal difference of opinion.

4. Corpus data

The corpus of CTFs in Dutch legal language is based on civil cases in Dutch-speaking Belgian courts of law, and consists of an overview of each lawsuit, viz. the parties involved, the followed procedure, the claims and major lines of reasoning of the parties, and the CTFs which occur in them, situated in their argumentative context. In each legal case, the texts that were analyzed for CTFs consist of the lawyers’ conclusions, interlocutory decrees (if there were any), and the final judgment.

5. Data analysis

This section presents a functional typology of CTFs in civil cases in argumentative legal language, based on the above-mentioned parameters of the status of the litigious facts referred to in the antecedent, the relation between antecedent and consequent, and the argumentative context in which the CTF occurs. It proceeds by considering the four possible combinations of values of the first two parameters, and for each combination it takes into account the position and function of each CTF in its argumentative context in order to finally arrive at a number of functional types of CTFs. At the end, a note is added on *quod non-* and *per impossibile*-conditionals – a type of conditional that is quite unusual outside legal language, and bears a remarkable resemblance to some of the CTFs in the typology. For that reason it cannot remain unmentioned here. Examples of the corpus data on which the typology is based, are presented in Dutch, followed by an English translation between single quotes.

5.1. Combination I

In a first combination an antecedent referring to well-established litigious facts is paired up with a purely conditional relation between antecedent and consequent. These values are both fulfilled in (10). This CTF is taken from a case in which a mother during pregnancy told her obstetrician that she had a severely handicapped nephew. The obstetrician, however, did not perform any tests; nor did he refer his patient to a clinical geneticist. Once the child is born with a severe handicap, the parents sue the obstetrician for negligence, and they claim financial compensation for their child’s medical bills. It is in this context that the parents put forward (10). The failure of the obstetrician to refer his patient to a clinical geneticist is beyond discussion, so the fact referred to in the antecedent is well-established. As to the second parameter, the relation between antecedent and consequent is of a purely conditional nature, with the conditional conjunction *als* introducing the subclause.

(10) *Als de gynaecoloog had doorverwezen naar een klinisch geneticus, dan was er geen medische schade geweest.*
‘If the obstetrician had referred the patient to a clinical geneticist, there would not have been any medical damage.’

Beside the linguistic realization and the situational and legal context, the argumentative context of (10) has to be brought into account as well. In this context (10) is put forward as an argument in defense of the parents’ standpoint that the obstetrician’s negligence was the cause of their child’s medical damage, which qualifies him as liable for this damage. The warrant for this kind of argumentation is to be found in the guidelines of the DoE (see section 1: 4-5), which state that accepting a defendant’s wrongful action as a conditio sine qua non for a particular damage necessitates accepting a causal connection between the wrong and the damage, and even the liability of the person responsible for the wrong.

A CTF very similar to that in (10) is (11), which occurs further on in the parents’ argumentation in the same legal case. It is a pure conditional, introduced by the conditional conjunction indien, and the facts in the antecedent are well-established, viz. the mother in fact did not know in time how high the chances were of severe damage of the fetus. (11) differs from (10), however, in that it is not used in direct application of the DoE, since its antecedent does not directly refer to the defendant’s wrongful action, and the consequent makes no mention of the damage at issue. Rather, the antecedent is situated somewhat later than the wrongful act specified in the indictment, and the consequent is situated before the actual damage arose.

(11)  Indien de moeder van het nu gehandicapte kind tijdig had geweten hoe groot de kans op ernstige beschadiging van de vrucht was, dan had ze abortus laten plegen.
‘If the mother of the now handicapped child had known in time how high the chances were of severe damage of the fetus, she would have had an abortion.’

This observation shows that the antecedent in (10) does not directly lead to the consequent. There are a number of intermediate steps which constitute a chain leading from antecedent to consequent (see Fearon 1996). Some of these intermediate steps in (10) have been reconstructed in grey in figure 1. The antecedent and consequent of (11) connect the second and third reconstructed intermediate step.
It now remains to be determined how the CTF in (11) relates to its argumentative context. One of the typical characteristics of any chain is that it is only as strong as its weakest link. So in order for the link between the antecedent and consequent in (10) – represented by the black boxes at the ends of the chain in figure 1 – to be acceptable, each of the intermediate steps between them needs to be acceptable as well. The link between the mother’s timely knowledge of the damage to the fetus and her decision to have an abortion is particularly weak. Clearly, the mother’s decision is based on her own free will, rather than on physical or probabilistic laws, which are usually better resistant to criticism. The CTF in (11) is the only step that is actually made explicit in the parents’ argumentation, because it is the weakest step in the chain that is in need of further supporting argumentation. The context shows that the parents offer this argumentative support by arguing that having an abortion would have been advised by the medical staff, and that it would have been the normal thing to do, had the damage to the fetus been discovered in time. The CTF in (11) is hence put forward with the initial goal of rendering the CTF chain in (10) maximally acceptable, and with the final purpose of substantiating a standpoint concerning a causal connection between the defendant’s wrong and a particular damage.

Given the specific nature of the standpoints that CTFs like (10) and (11) are to defend, they are labeled *causation-related* CTFs. They are put forward to prove either directly or indirectly the existence of a causal connection between an alleged wrong and damage in a law suit in application of the DoE. If the antecedent refers to a wrong, and the consequent refers to the damage in a legal case, the CTF is used as a direct argument for proving causation. If the antecedent, the consequent, or both refer to an intermediate step between wrong and damage, the CTF is used as an indirect argument to prove causation, by representing one particular intermediate step in the chain between wrong and damage as acceptable.

The causation-related use of CTFs, however, is not the only use of CTFs with antecedents referring to well-established facts and with a purely conditional relation between antecedent and consequent. Another usage type is represented by the CTF in (12). This example is taken from a law suit of a firm against a salesman who after his dismissal at that firm continues selling its products, while keeping the profits for himself. One of the firm’s complaints is that the salesman’s clients are not informed about his changed professional status. To gather proof for that indictment the firm sends an undercover writ to the salesman as a potential client. After a conversation with the salesman in which the latter pretends to be still working for his former firm, the client identifies himself as a writ. Since the salesman did not inform his “client” about his changed professional status, the firm puts forward the CTF in (12). This is a CTF of the first combination of parameters, since the facts in the antecedent are well-established, and the relation between antecedent and consequent is of a purely conditional nature, with the conjunction *als* marking the antecedent.

(12) *Als de deurwaarder zich niet kenbaar had gemaakt, had de klant nog steeds niet geweten dat de verkoper niet voor zijn vroegere werkgever aan het verkopen was.*

---

11 It is for example more difficult to object against the thought that performance of the necessary tests would have brought to light the damage to the fetus, or that having an abortion would have prevented the presence of medical damage, simply because these links are based largely on physical or automatic processes with a high degree of probability.
‘If the writ had not identified himself, the client would still not have known that the salesman was not selling for his former firm.’

On an argumentative level, the function of this CTF differs from that of the causation-related ones. Firstly, this functional difference relates to the composition of the CTF. Rather than referring to a wrongful act of the defendant, the antecedent in (12) refers to an action that is to be ascribed to a person different from the defendant, viz. the writ. Secondly, like the CTFs (10) and (11), (12) is put forward as an argument in defense of a certain standpoint, but the nature of this standpoint differs. Instead of pointing out the presence of a causal connection, the standpoint defended by (12) indicates the salesman’s bad faith and bad intentions of keeping his clients ignorant of his changed professional status. The salesman’s good faith would imply his revealing his changed professional status to his “client”, viz. the undercover writ, but he did not do that. On the other hand, the salesman’s alleged bad intentions were not realized in this case either, since the “client” did not remain ignorant of the salesman’s changed professional status. The CTF in (12) serves as an argument to demonstrate that the observation that the salesman’s alleged bad intentions were in fact not realized is not the result of the salesman’s honesty and good intentions, but it is rather to be ascribed solely to an external factor beyond the salesman’s control, viz. the “client” putting an end to the undercover operation and revealing his true identity as a writ. In other words, the non-realization of the salesman’s alleged bad intentions does not imply the latter’s good intentions, but it rather proceeds from an intervention preventing these bad intentions from being executed.

Conversely, the CTF in (13), taken from another lawsuit, is used to argue for the good faith and good intentions of a defendant who signed a contract to buy a car, but failed to comply with the agreement because a sudden change of her financial status precluded the possibility of obtaining a car loan. The fact that the defendant did not realize her intentions of observing the agreement and actually purchasing the car is argued to be due exclusively to an intervention beyond the defendant’s control, viz. maladministration of her accountant, which led to a sudden deterioration of the defendant’s financial status. This kind of argumentation has been described by Perelman and Olbrechts-Tyteca (1969: 314-316) as the technique of restraint, which consists in reducing the responsibility of a person for his actions by describing them as exceptional or ascribing them to a third party. According to Perelman this technique is intended to arouse pity in the judges.

(13) Als er geen plotselinge liquiditeitsproblemen waren opgetreden door slecht beheer van de boekhouder, dan was de autolening niet in het gedrang gekomen.

‘If no sudden problems of liquidity had occurred because of maladministration by the defendant’s accountant, the car loan would not have been aborted.’

A second argumentative use of purely conditional CTFs based on well-established facts is hence related to demonstrating a legal party’s good or bad faith. Given the specific nature of the standpoints that this type of CTF is to defend, it will be referred to as the faith-related CTF. It is typical of these CTFs that the facts referred to in the antecedent are ascribed to a person different from the defendant, and realized entirely beyond the control of the legal party whose good or bad faith is under discussion. In that way the party whose good or bad faith is to be judged cannot be held responsible for the non-realization of his good or bad intentions. In case of demonstration of good faith the
defendant (allegedly) cannot help it that his good intentions were not realized, and in case of demonstration of bad faith it is claimed to be exclusively due to external circumstances that the defendant did not manage to realize these bad intentions.  

5.2. Combination II

This section is devoted to purely conditional CTFs with an antecedent referring to facts that are under discussion. What it means for the facts referred to in an antecedent to be under discussion is illustrated in (14). This CTF is taken from a law suit between two business partners, one of whom borrowed 5.5 million francs from the other. When years later the former needs a fiscal certificate for this loan, a discussion unfolds about the actual date of the loan agreement. This discussion cannot be ended by checking the date on the original loan certificate, as one version of it is lost, and the other is alleged to have been forged. The lender claims the agreement was made on January 31, 1994. The borrower claims it was made on an earlier date, and argues against his opponent’s claim with (14). This CTF is hence a typical example of the second combination of parameters, as the date of the loan agreement is under discussion, and the relation between antecedent and consequent is of a purely conditional nature, with als introducing the conditional subclause.

(14) Als de lening afgesloten was geweest op 31 januari 1994, dan had de verschuldigde som op 29 mei 1996 6.011.480 franc bedragen.
‘If the loan agreement had been made on January 31, 1994, the sum due on May 29, 1996 would have amounted to 6.011.480 francs.’

Example (14) can only be interpreted correctly with a thorough understanding of its argumentative and situational background. A crucial fact, for example, is the existence of an official and undisputed document, issued by the lender, stating that on May 29, 1996 the borrower owes him over seven million francs. (14) conveniently makes use of this fact to argue against the lender’s standpoint that the loan was made on January 31, 1994. In the antecedent of (14) the borrower temporarily, for the sake of the argument, accepts the lender’s claim that the loan agreement was made on January 31, 1994, and repeats or echoes this claim (see Declerck and Reed 2001: 83). From this antecedent he mathematically deduces in the consequent the sum that would be due on May 29, 1996, based on the loan of 5.5 million francs and the (undisputed) interest rate of 4% stipulated in the loan agreement. The result of this calculation, 6.011.480 francs, does not match the lender’s calculations of the sum due on that date, over seven million francs, as communicated to the borrower in the above-mentioned official document. Based on the logical incompatibility between the borrower’s and the lender’s calculations of the sum due on May 29, 1996, the borrower infers the falseness of the antecedent, and hence the falseness of the lender’s claim about the date of the loan agreement. On the basis of this apparent incompatibility, (14) functions as an argument to dissociate from the lender’s standpoint. This type of CTF will be referred to as a

---

12 CTFs that would be part of this type of CTF, but that were not recorded in the analyzed civil cases, are those making reference to attenuating circumstances, like in if my client had not had such an unhappy childhood, he would never have started stealing. They too refer to exceptional circumstances reducing the defendant’s responsibility for his actions, and are intended to arouse pity in the judge.
dissociating echoic CTF in that it echoes another party’s attitude with the intention of expressing the speaker’s opinion on this attitude, viz. an opinion of disapproval and negation (see Wilson and Sperber 2004).

Deducing the falseness of a proposition $p$ on the basis of two premises, viz. a conditional statement \( \text{if } p \text{ then } q \) and the falseness of the consequent $q$, is called *modus tollens* (MT), a valid syllogism in logic. The formal validity of the syllogism, however, does not necessarily ensure the truth of the premises. In the case of (14) the premises are clearly true, in that the conditional statement is based on a mathematical calculation, and the falseness of the consequent is clear from an official document containing a different calculation. However, the truth status of the premises of MT reasoning is not always this clear. Usually the conditional statement is not based on mathematical or logical operations, but on probabilistic or other types of calculations, and neither is it always as clear whether the consequent is actually false, or rather improbable, undesirable, or useless. Whereas MT reasoning applies only to the logical form of the syllogism, the application of this reasoning in argumentative contexts has been studied as the *reductio ad absurdum* in argumentation theory. As described in section 1, *reductio* consists of temporarily accepting a claim for the sake of the argument, and then relating it to *absurd* consequences, which means that these consequences are either incompatible with the claim in question, or with other aspects of the world as it is known and accepted to the parties involved in argumentative discourse.

(15) is presented as an example of a reductio in which the truth status of the premises is not as definite as in (14). It is taken from a case in which a transport company sues a firm selling bricks for not hiring the former for transportation orders as required by an alleged exclusivity contract between the firms. Instead, the latter has his bricks transported by another firm. The brick firm claims that the reason for not hiring the plaintiff were the uncompetitive prices issued by the latter. The transport company reacts to this with (15), a purely conditional CTF, marked by the conditional conjunction *als*, in which the antecedent refers to facts that are under discussion. In this case, the crucial fact is that the transport company is in possession of an agreement on the prices that is signed by the brick firm. The argumentation in which (15) occurs, is formally identical to that of (14). The cases differ, however, on the first premise, viz. the conditional statement, in that the consequent in (15) does not follow from the antecedent deductively, with mathematical certainty, but rather on grounds of probability. It is not typical or very likely that firms sign an agreement on prices that are judged uncompetitive by one of them, but it is not impossible. There may be other reasons for signing such an agreement.

(15) \textit{Als de prijzen niet competitief zouden zijn, dan was er geen overeenkomst over gesloten.}
‘If the prices were not competitive, then no agreement would have been made on them.’

It is clear that the reliability of cases of reductio varies on the basis of the first premise, viz. the nature of the conditional statement. Mathematical calculations are more reliable than probabilistic statements. The nature of the consequent, however, may also affect the reducio’s reliability, as is shown in (16), which is put forward by the transport company later on in the same law suit. The brick firm claims that the transport company and itself agreed on pursuing a policy of free competition, so that it could give its transportation orders to any transport company with reasonable prices. The transport
company reacts to this standpoint with the argument in (16), hinting at the price agreement signed by the brick firm, which was valid for a period of five years – a long term agreement in business. Different from cases like (14) and (15), the consequent does not directly contradict reality. Although long term price agreements have been signed, the CTF does not say that in case of free competition they would not have been signed, but rather it says that their existence would have been superfluous in that case, assuming that superfluous actions are not actually undertaken. Cases of reductio starting from this particular assumption invariably include modifications such as overbodig, nutteloos, or zinloos in the consequent, meaning superfluous, useless, and pointless, respectively.

(16) *Indien er vrije competitie zou hebben bestaan, zouden de prijsafspraken op lange termijn overbodig geweest zijn.*

‘If there had been free competition, the long term price agreements would have been superfluous.’

Beside the cases of reductio, the corpus data contain yet another application of echoic dissociating CTFs. Example (17) is a purely conditional CTF, marked by the conditional conjunction *indien*, and its antecedent refers to facts that are under discussion in the law suit. The example is taken from the same case as (9), between a wholesale fruit merchant and a customer who refuses to pay for a bad batch of apples. The former claims the customer has an obligation to pay for the fruit. The latter disagrees with this standpoint, and puts forward (17) as an argument against it. The CTF itself represents one of the conditions stated in article 1604 et seq in Belgian consumer law for the arising of the obligation to pay, viz. the seller meeting his commitments. The customer argues that in this case the obligation does not exist because the said condition is not fulfilled. In his view, the fruit merchant did in fact not meet his commitments, which is stressed by the presence of the parenthetical comment *in casu quod non*, meaning which is not the case in this case.

(17) *De betalingsplicht van de koper zou slechts zijn ontstaan indien de verkoopster haar eigen verbintenis zou uitgevoerd hebben, in casu quod non.*

‘The obligation to pay would have arisen only if the seller had met her commitments – in casu quod non.’

On the one hand, this CTF strongly resembles examples (14-16) in its argumentative function. It echoes a claim made by an opposing legal party, in this case concerning the existence of the obligation to pay, with the purpose of dissociating from it. So like the cases of reductio, this is a dissociating echoic CTF. On the other hand, unlike the cases of reductio, the echoing takes place in the consequent, and the relation between antecedent and consequent is stricter than purely conditional, viz. it is of a biconditional nature, which is clear from the focus particle *slechts* modifying the conjunction *indien*, corresponding to English *only if*. Argumentatively, the example in (17) differs from the cases of reductio, in that it is the consequent that is denied on the basis of the falseness of the antecedent rather than the other way around. Logic studies this line of reasoning under the label of *denying the antecedent*, or DA-reasoning. Whereas MT is essentially a valid syllogism, denying the antecedent is valid only if it is based on a biconditional statement in the premises. Given the biconditional nature of (17), it is a valid instance of DA-reasoning.
5.3. Combination III

A third combination of parameters focuses on CTFs in which the antecedent refers to facts that are under discussion in a lawsuit, and which have a concessive conditional relation between antecedent and consequent. (18) is an example of such a CTF. The introduction with zelfs al indicates a concessive conditional subclause, which is even stressed by the presence of the focus particle nog in the main clause. For an evaluation of the status of the facts referred to in the antecedent, an insight into the situational and argumentative context of the case at hand is in order. As Mr. and Mrs. Swarts disagree about the terms of their divorce, they bring the matter to court. Mrs. Swarts claims that the divorce should be certified at the expense of her husband. The latter claims the opposite because, according to Mr. Swarts, his wife committed adultery, and her behavior was often insulting to him – both arguments constituting legitimate reasons for filing for divorce. In an attempt to prove his wife’s adultery, Mr. Swarts has a writ check the house of Mr. Verheylen, the alleged lover of Mrs. Swarts, at 5.00 a.m to establish her adultery there. In his report, the writ records that Mrs. Swarts and Mr. Verheylen were both present in his house at 5.00 a.m. that night, but he expresses uncertainty about the question whether they were sharing the same bed. Mrs. Swarts claims they slept in separate beds, and concludes that her behavior was not insulting to her husband. Mr. Swarts reacts to this with (18). In his opinion Mr. Verheylen and his wife did share the same bed, as is to be understood from the counterfactual antecedent in (18), and even stressed by the parenthetical comment quod certe non – meaning which is certainly not the case. It is clear, hence, that the facts referred to in the antecedent are under discussion by the legal parties.

(18) Zelfs al mochten de heer Verheylen en mevrouw Swarts de nacht niet in hetzelfde bed hebben doorgebracht, quod certe non, dan nog wordt door hun gedrag naar de buitenwereld toe alleszins de indruk gewekt van het bestaan van een meer dan vriendschappelijke relatie, hetgeen voor de heer Swarts evenzeer beledigend is.
‘Even if Mr. Verheylen and Mrs. Swarts had not spent the night in the same bed, quod certe non, then still, through their behaviour towards the outside world, by all means they gave the impression of the existence of a more than just amicable relationship, which is just as insulting to Mr. Swarts.’

The argumentative function of (18) differs thoroughly from the CTFs described in the previous sections, which all served as arguments to support or deny a certain type of standpoint. For an insight into the argumentative function of (18), more elaborate knowledge of its argumentative context is in order. As described above, the lack of proof of Mrs. Swarts and Mr. Verheylen sharing the same bed is used by the former as an argument to strengthen her standpoint on the absence of insulting behavior on her part towards her husband. (18) is put forward by Mr. Swarts to refute this argumentation, i.e. to attack the argumentative force Mrs. Swarts attaches to the argument she adduces in defense of her standpoint. In the consequent in (18) Mr. Swarts refers to a condition that in itself constitutes insulting behavior towards a husband, viz. his wife giving the impression of having a more than amicable relationship with another man. So even if one were to accept Mrs. Swarts’ argument that she did not share the
same bed with Mr. Verheylen, this does not necessarily lead to the conclusion that her behavior was not insulting to Mr. Swarts, since her openly romantic love affair with Mr. Swarts is in itself a sufficient condition for establishing insulting behavior. In other words, according to Mr. Swarts proven adultery is not an exclusive necessary condition for the presence of insulting behavior.

CTFs of this type are characterized by an antecedent echoing an argument adduced by an opposing legal party in defense of its standpoint, and a consequent that offers an argument aimed at refuting the argumentative force the opposing legal party attaches to that argument. The argument offered in the consequent may be of various types, but space does not permit to go any further into these types. In conclusion, CTFs of this third combination temporarily, for the sake of the argument assume the truth of an argument of an opposing legal party in order to deny its argumentative force, and to dissociate from the argumentation put forward by the opposing legal party. For that reason they will be referred to as dissociating echoic concessive CTFs.

5.4. Combination IV

This last section focuses on CTFs with an antecedent referring to well-established facts and with a concessive conditional relation between antecedent and consequent. Such a CTF is given in (19), which is taken from a lawsuit of a building contractor against a window and door company about the bad and late installation of doors and windows in an apartment of his. Because of the installation problems the apartments could not be rented out on the planned date, and the building contractor suffered rent losses for which he now claims financial compensation. The window and door company, however, refuses to accept responsibility for these rent losses, and it argues for this with (19). The antecedent of (19) is introduced with concessive conditional zelfs al, and the facts referred to in the antecedent are agreed on, viz. the installation of windows and doors happened in fact later than planned and was less than optimal.

(19) Het pand had niet kunnen worden verhuurd, ook al zouden ramen en deuren afge werkt geweest zijn.
‘The apartment could not have been rented out, even if the windows and doors had been installed.’

An accurate interpretation of (19) is dependent both on situational and legal factors. From a legal theoretical perspective, it is important to interpret the counterfactual antecedent in (19) as a condition that is not a conditio sine qua non for the consequent. To say that even if A had happened, B would not have happened means that is not the case that if A had happened, B would have happened. More specifically, the fact that windows and doors were not installed in time was not a necessary condition for the fact that the apartments could not be rented out on the scheduled date. As discussed in 5.1, the DoE in Belgian law stipulates that a wrongful fact or event is a cause of a damage if it is a conditio sine qua non of that damage. In other words, the window and door company puts forward (19) with the purpose of proving, on the basis of the DoE, that the problematic installation of the doors and windows was not the cause of the delay in renting out the apartments. The company argues that the problematic installation was not a conditio sine qua non because other aspects of the apartment were not finished.
either. They refer to the absence of a staircase, an elevator, illumination, and floor covering to prove that there were yet other reasons for the delay.

This type of CTF is used to prove the absence of a causal relationship between a wrong referred to in the antecedent, and a damage referred to in the consequent in application of the DoE. The argumentative context in which CTFs with the relevant combination of parameters occurs indicates the same causation-related use of CTFs as studied in 5.1, the only difference being that in 5.1 CTFs were used to prove causation, whereas here they are used to prove the absence of causation.\(^ {13} \)

### 5.5. A note on quod non- and per impossibile-conditionals

In the context of a typology of CTFs in argumentative legal language, a note should be added on a group of conditionals with antecedents containing the parenthetical comment *quod non* or *per impossibile*. These conditionals which bear a strong resemblance to CTFs are recorded with some frequency in the corpus data, but are quite unfamiliar in everyday language. CTFs typically refer to the past or the present, and only under specific conditions is counterfactual reference to the future possible.\(^ {14} \) In most contexts the future is unknown, and hence not referred to counterfactually. The corpus data, however, show that lawyers in their conclusions do formulate conditionals strongly resembling CTFs, with antecedents referring to future possibilities. Most notably, they refer to the possibility of a particular procedural development, like a court decision in a law suit, to which they add a parenthetical comment like *quod non* or *per impossibile*.\(^ {15} \)

With that comment they claim that the future possibility in question is in fact not a possibility at all. These conditionals do not only differ from the CTFs dealt with above in referring to the future. Their antecedents, rather than referring to litigious facts, make reference to possible legal decisions by the court. The conditionals themselves are concerned with the future procedure of the legal process, rather than with argumentation for or against certain standpoints or arguments. The above-mentioned parenthetical comments are sometimes used in CTFs to further emphasize the counterfactuality that is already an inherent part of the meaning of the CTF itself. In *quod non* - and *per impossibile*-conditionals, however, the parenthetical comments are the sole indication of alleged counterfactuality in the antecedent. Although different from CTFs in many respects, these conditionals deserve mentioning here, since they too make reference to a possibility and contain the suggestion that this possibility in fact is non-existent.

An example of such a conditional is (20), taken from a law suit between the sons and the niece of a deceased aunt. Because the niece took care of her aunt all her life, the latter donated her a patch of land. When after her death her sons find out about this, they claim that it was the aunt’s intention of charging her niece for the land, but that the niece refused to pay. In an attempt to settle this painful situation, the niece writes her

\(^ {13} \) For more elaborate feedback on the causation-related use of CTFs, the often problematical application of the DoE, and the various motivations for denying the presence of a causal relation, see Nivelle and Van Belle (in press).

\(^ {14} \) In the CTF *If you had come tomorrow instead of today, you would not have found me at home* reference is made to a future possibility that the speaker knows or assumes to be false. In theory the visitor could visit again tomorrow, but this possibility seems to be ruled on the basis of background knowledge of the speaker.

\(^ {15} \) (*In casu*) *quod (certe) non* means “(in this case) this is (definitely) not the case”, and *per impossibile* means “which is impossible”.\ revoltos de la letra negra
cousins a letter offering them to pay a sum of 2.726,83 euros as a compensation for their alleged loss. When the brothers reply that the patch of land is worth much more, the niece retracts the offer. In court, she argues that she does not owe anything to the sons, since she can adduce a deed of gift for the patch of land, signed by her late aunt. The sons, however, argue that she admitted being indebted to them by offering them to pay a sum of 2.726,83 euros. The niece first denies that this letter was an acknowledgement of debt and subsequently she puts forward (20) . On the one hand, this example shows the combination of parameters dealt with in section 5.2, because the facts referred to in the antecedent are under discussion – the court may judge that either the letter qualifies as an acknowledgement of debt or not –, and the relation between antecedent and consequent is purely conditional, as the antecedent is introduced by the purely conditional conjunction *indien*. On the other hand, its interpretation does not correspond to any of the attested types of CTFs in 5.2 because of the above-mentioned differences between this type of conditional and the CTF.

(20) *Indien de rechtbank - per impossibile - toch van oordeel zou zijn dat de brief van het nichtje als schuldbekentenis geldt, en dat dus het nichtje 2.726,83 euro verschuldigd zou zijn, wenst het nichtje erop te wijzen dat er geen rente verschuldigd is, want in de brief wordt enkel melding gemaakt van het gezegd bedrag en geenszins van enige intresten.*

‘If the court – per impossible – were to judge that the niece’s letter qualifies as an acknowledgement of debt, and that the niece, hence, is indebted for 2.726,83 euros, the niece wishes to point out that no interests are indebted, for the letter makes mention only of the said sum, and not of any interests at all.’

For a correct interpretation of this conditional in its argumentative context, it is essential to take the structural composition of conclusions into account. Lawyers usually make more than one legal claim (or counterclaim) in a law suit. If so, one of them is presented as the main claim, a second claim is subordinate to the main claim, a third claim is subordinate to the second claim, and so on. Obviously, the main claim is most advantageous to the lawyer’s client, while the subordinate claims are gradually less advantageous. This structural composition ensures that the client does not necessarily end up empty handed if the judge rejects the lawyer’s main claim. Exactly the same principle of subordinate ordering applies to attacks on those claims: A claim can be attacked in its entirety, or merely on specific parts. In the case of (20), one of the sons’ claims is that the niece has to pay the 2.726,83 euros mentioned in her letter, with a stipulation added that interests on that sum are due as well. The niece attacks this claim with two subordinately ordered claims of her own. First she denies that the offer in the letter was an acknowledgement of debt, claiming that she does not owe the sons any amount of money. Subordinately, should the court reject her first claim and rule that she does owe her nephews 2.726,83 euros, she points out that the letter makes no mention of interests, claiming that she does not owe the brothers any interests.

The interplay between the sons’ and niece’s claims, as described in the previous paragraph, is represented in figure 2. The antecedent of the conditional in (20), represented in the lower box of the niece’s claims in figure 2, refers to potential rejection of the niece’s main claim, represented in the upper box. The crooked arrow leading from the upper to the lower box indicates that the second claim applies only after the main claim has been refused by the court. The second or back-up claim is represented in the consequent of (20). That this second claim is actually regarded as a
back-up, is apparent from the presence of the parenthetical comment *per impossibile* in the antecedent. Rejection of the niece’s main claim is, according to her legal representation, virtually impossible. Hence, a last difference from the CTFs dealt with in the previous sections lies in the fact that these conditionals are not used as an argument for or against a specific standpoint or argumentation, but they function as a standpoint themselves, a claim in the hierarchy of claims in a law suit. Conditionals like (20) play a role in the ordering of legal claims or attacks on them, and the exact nature of that role is made explicit in the antecedent. For that reason this type of conditional will be referred to as the *claim-ordering* conditional.

*Figure 2*

<table>
<thead>
<tr>
<th>Brothers’ claim</th>
<th>Niece’s claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>The niece is indebted for 2,726,83 euros (plus interests)</td>
<td>The niece is not indebted the said 2,726,83 euros</td>
</tr>
<tr>
<td></td>
<td>If the court judges the niece is indebted the 2,726.83 euros, at least she does not owe the brothers any interests.</td>
</tr>
</tbody>
</table>

These quod non- and per impossibile-conditionals also occur in a concessive conditional form, in which their function differs somewhat from that in claim-ordering conditionals. (21) is an example of such a concessive conditional, with the conjunction *zelfs als* introducing the antecedent and the focus particle *nog* in the consequent. It is taken from the same law suit as (17), in which a wholesale fruit merchant sues a customer who refuses to pay for a batch of apples, allegedly because the apples are diseased. The merchant claims that the customer himself is liable for this damage, since the latter neglected to inspect the apples on delivery in Belgium, and discovered the alleged problem only after having transported the batch to Moscow. The customer’s standpoint is that he was under an obligation to inspect the apples only on arrival of the batch at its final destination, viz. Moscow. Therefore, the customer argues that not the customary rules, but the Incoterms apply to the contract, which is a set of rules developed exclusively for the trading of goods which are put on transport immediately after delivery, and which allegedly impose an obligation on the buyer to inspect the purchased goods only at the arrival of the goods at their final destination. The merchant is convinced that the contract is subject to the customary rules, but still he reacts to the customer’s claims about the Incoterms with (21).

(21) *Zelfs indien bepaald zou worden, quod non, dat deze gewoonteregels niet van toepassing zouden zijn, kan de koper nog steeds niet gevolgd worden in haar stelling dat de goederen pas moesten worden gekeurd op de plaats van aankomst (Moskou).*
‘Even if it were determined, quod non, that these customary rules do not apply, still the buyer cannot be followed in his position that the goods did not need to be inspected until at the place of arrival (Moscow).’

The legal context in which (21) occurs is similar to that of the conditional dealt with in (20), in that lawyers involved in a law suit order their claims, counterclaims, and attacks on claims in a certain hierarchy. In this case, the merchant’s claim is that the customary rules (rather than the Incoterms) apply to the contract, and following these rules it is clear that the customer should have inspected the apples before their arrival in Moscow. In the case, however, that the court should agree with the customer, and decide that the Incoterms apply, the merchant does not relinquish this claim. The parenthetical comment *quod non* in the antecedent in (21) first indicates that the possibility of the court deciding in favor of the customer on the topic of the Incoterms is presented as not really a possibility at all. But secondly, hypothetically supposing that the court would do so, it is pointed out that application of the Incoterms does not lead to the conclusion that the goods had to be checked only in Moscow. This standpoint of the merchant is argued for by the observation that this is not a correct interpretation of the Incoterms, as the relevant rules of the Incoterms stipulate that title as well as risk shifts from the seller to the buyer from the seller’s door. Conditionals of this type present claims that stand even in case other claims or attacks of the opposing legal party should be accepted by the court. In other words, these conditionals confirm a legal party’s claim, under the hypothetical circumstances that certain claims or attacks of the opposing legal party are followed by the court. For that reason, these conditionals are characterized as *claim-confirming* conditionals.

6. Conclusion

This paper set out to develop a functional typology of CTFs in argumentative legal texts providing a structured account of the various ways in which CTFs contribute to resolving a legal difference of opinion. It set out from two parameters concerning the linguistic realization of the CTF and the situational context in which the CTF occurs. For each combination of those parameters, an in-depth analysis of the CTFs was carried out on the basis of their argumentative, situational and legal background, which lead to a number of functional types of CTFs. First, as was to be expected from the application of the DoE in Belgian law, CTFs are used as direct or indirect arguments to prove or deny the existence of a causal connection between a wrong and damage in a law suit. Secondly, CTFs are adduced in proof of a defendant’s good or bad faith in a trial. Thirdly, CTFs are used to argue against the existence of certain litigious facts, either through what has been studied in argumentation theory as *reductio ad absurdum* or through what logicians refer to as reasoning on the basis of *denying the antecedent*. Fourthly, CTFs are used in argumentation questioning or denying the argumentative force of arguments put forward by an opposing legal party in defense of a certain standpoint. Figure 3 gives an overview of the various types of CTFs with their respective functions, and it lists the various examples used in this paper for each type of CTF. In an extra note reference was made to future conditionals with parenthetical comments like *quod non* and *per impossibile* in the antecedent that are used either to structure the claims made by a legal party in a certain hierarchy, or to affirm the validity
of certain claims even if other claims of the opposing legal party are accepted by the court.

**Figure 3**

<table>
<thead>
<tr>
<th>Definition parameters</th>
<th>Relation antecedent-consequent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Purely conditional</td>
</tr>
<tr>
<td>well-established facts</td>
<td>Causation-related CTFs</td>
</tr>
<tr>
<td></td>
<td>Examples (10), (11)</td>
</tr>
<tr>
<td></td>
<td><strong>Function:</strong> expressing causation</td>
</tr>
<tr>
<td>Faith-related CTFs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Examples (12), (13)</td>
</tr>
<tr>
<td></td>
<td><strong>Function:</strong> demonstrating good/bad faith</td>
</tr>
<tr>
<td>Dissociative echoic CTFs</td>
<td>I: Reductio ad absurdum</td>
</tr>
<tr>
<td></td>
<td>Examples (14), (15), (16)</td>
</tr>
<tr>
<td></td>
<td><strong>Function:</strong> denying claim opposing legal party</td>
</tr>
<tr>
<td></td>
<td>II: Denying the antecedent</td>
</tr>
<tr>
<td></td>
<td>Example (17)</td>
</tr>
</tbody>
</table>

**Acknowledgements**

I would like to thank W. Van Belle, H. Smessaert, K. Dieussart, A. Verhulst, J. Goodwin, and A. Van Linden for their valuable comments on previous versions of this paper. I am also grateful to F. Kauffeld, K. Hannken-Illjes, and D. Cohen for the interesting discussions we had during the ninth International Pragmatics Conference in Riva (2005). Furthermore I am obliged to the courts of law in Tongeren and in Leuven, and to a law firm that for reasons of privacy wishes to remain anonymous, for giving me the opportunity of consulting their files.

**References**

Counterfactual conditionals in argumentative legal language in Dutch


Broda-Bahm, Kenneth T. (2001) Your counterfactual strategy: How you can influence jurors' thoughts about 'what might have been'. Paper presented at the Annual Convention of the National Communication Association, Seattle, WA.


Rescher, Nicholas (1961) Belief-contravening suppositions. The philosophical review 70.2: 176-196.


