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A Lexico-Semantic Description of the Language of Contractual Agreement

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Abstract

Contractual agreements are common forms of legal documents that should be taken seriously in daily human dealings. Several unsuspecting people enter into agreements without paying close attention to certain salient terms which may have serious legal consequences once breached. This is perhaps because such contract documents are drafted with the convention of legal expression different from ordinary use of language. This work is an exploration and a lexical and semantic analysis of the language of selected contractual agreements. It is anchored on Systemic Functional Linguistics to investigate the lexical and semantic features of landed and hire purchase contracts. Ten contract documents from four private law firms were randomly selected and examined. The results show that hire purchase and landed property contracts are replete with unconventional capitalization, modals, conditionals, archaic terms and passive constructions. Also preponderant are lengthy and complex sentences. Landed and hire purchase contracts are abstract, cumbersome and impersonal in nature. Language therefore becomes highly influenced with its modals and conditionals that showcase hypothetical situations introduced by lexical items such as *if, shall, unless, in case* and *in the event that* which are usually embedded in a single sentence and perhaps inserted with phrases within the clause. To this end, the paper concludes that parties in legal contracts should always be wary of salient and prominent linguistic features that may cause future litigations in the case of a breach.

Key Words: Contract, Legal Document, Hire Purchase, Complexity, Contractual Agreement.

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1. Introduction

There is no gainsaying that language is potentially sensitive to all the contexts in which it is applied in every human endeavour. Ogunsiji (2013) avers that as human beings make use of language to achieve scores of phenomena, language itself does some things to and with us. Legal language as one of the human endeavours, belongs to the variety of English language which is usually exploited by lawyers, judges and other members of the legal profession in the discharge of their legal responsibilities. In the opinion of Danet (1980), syntactic features of legal language in documents are distinctive of legal English and as much account for difficulty that 'non learned people face in an attempt to comprehend it. Tiersma (1999) in his own view observes that legal language has diverged from ordinary usage and therefore can be assessed by comparing it to ordinary language. Legal translation is peculiar in its own way. This assessment is predicated on the originality of the literary language that is used for the interpretation of ambiguous meanings, the terminological precision of specialized translation.

The task of translating legal texts demands special attention because such consists majorly of abstract concepts. In the word of Tiersma (1999), legal language usually tends toward serious formality in its choice of terms and expressions. Not only that, but it also ordinarily gravitates towards archaic term and phrases. Some lawyers prefer to use traditional terms instead of new ones. For instance, terms such as *inquire* is opted for instead of *ask; peruse* in place of the term *read; forthwith* for a phrase *of at once*. It is further noted that language of legal documents is regarded as a subset of a language rather than a distinct language in its ordinary use. One that is not unitary but

diverse and fluid determined by different cultural contexts. However, his guiding premise is that the sublanguage of legal discourse diverges from ordinary English in far more ways than the technical languages of most other professions.

Till date, legal language remains one of the very few languages combining between originality and creativity. In most cases, it occurs with such words that emanate from language such as archaic legal terms. There could be cogent reasons behind lawyers' preference for the use of such language. Foremost of the reasons might be for the purpose of adding some tenor of professionalism or giving an impression of formality. Examples of such expressions are reflected in the choice of archaic adverbs like *herein, hereto, thereon, hereinafter, and therein.* The terms give the document its necessary formal tone. It has also been noted that language of legal document is not only complex, but is unemotive, uninteresting and non-spontaneous in usage. They are words mixed together in legal terms to give new meaning. These characteristics make the interpretation of the document to be cumbersome for the 'non-learned' and the subsequent litigations arising from the misinterpretation of the language. With the belief that general awareness of the power of language to liberate and also handcuff the users, this paper investigates the lexical-semantic features of landed and hire purchase contract papers highlighting some of their salient interpretations.

This research work is predicated on the Systemic Functional Linguistics (SFL) Model popularised from Halliday's Scale and Category grammar. Awonuga (1982: 3) asserts that the main thrust of the Systemic grammar hangs on the 'system'. Ayeomoni (2000) corroborates this assertion that SFL relies on a range of choices, a set of possibilities that arises at a specified place in the language. Moreover, Systemic Grammar provides that operational levels of a language are three: substance, form and situation. Substance constitutes the raw material of language that could be phonic when it is speech and graphic when it is writing. The form is both of lexis and grammar. While lexis caters for the kind of pattern that operates between individual linguistic item and grammar. As a matter of fact, this aspect actually triggers the choice of this theory anyway. In furtherance to that, Systemic grammar also gives recognition to five different grammatical units in an attempt to account for the pattern of language. These are: morpheme, word, group, clause and sentence. The smallest of the units remains the morpheme while the sentence is ranked the highest in the taxonomy. Bye and large, the relevant and appropriate aspects of Systemic Grammar are exploited for this study.

It is herculean if not impossible in a paper of this kind to investigate all the available aspects of contractual agreement. Hence, this work has been restricted to only the review of some contract documents on hire purchase and landed property. Within the scope of this study, ten contract papers were selected with five in each aspect as noted earlier for critical examination.

2. Review of Related Works

A large number of Scholars have come up with the notion that legal English is usually embedded with peculiar language forms that are the same with that of laymen. According to Trebits (2009), legal language in its own merits differs from other common-core English varieties. In the research work, twelve bilateral legal agreements and contracts signed during the years 1962-1993 were analysed. In addition to other grammatical units, she studied two major areas of nominal group: the noun phrase complexity and type of modification. The work mainly concludes that the use of complex noun phrases, high frequency of relative clauses and prepositional relative clauses as post-nominal modifiers of the finite in legal texts are the preponderant differences.

Gbenga (2010) in *The Structure of Courtroom Conversations* opines that language of courtroom discourse is laced with relevance and precision in the use of language. Ofuokwu (2010) studies the language of lawmaking in the National Assembly. In his findings, he maintains that the language of legal writing is difficult as most of his respondents were not able to read and interpret legal concepts.

Legal English is peculiar with its peculiar use of adverbial elements as coordinating elements. It is worth noting that it is highly nominal in nature; the insertion of pre-modifying elements is restrained; verbal groups used in it are notable for the high proportion of non-finites. Long sentence, repetition of lexical items, complete major sentences, and complex sentences are other syntactic features that are common in a legal text.

The textual features of legal English are noted for fewer patterns of spacing (especially old legal English), fewer punctuation, clear logical sequence and initial capitalization. Danet (1980) claims that syntactic features of legal language in documents are distinctive of legal English and usually account for difficulty encountered by laymen in comprehending it. Ogunsiji and Olaosun (2009) carried out a Pragmatic Act studies in a particular Court-ruling. Using Pragmatic theoretical framework, the Speech Act Theory by Austin and Searle for their analytical tools, they reveal that the court-ruling discourse does not just compose of syntactically complex utterances, but also characterized by acts like assertive, declarative, directive and verdictive. They concluded that legal language can be best interpreted through the invocation of linguistic and pragmatic background of the participants in the discourse situation.

Awe and Fanokun (2018) examine the archaism elements as tools in legal contracts, adopting content analysis anchored on Systemic Functional Grammar. Their study conclude that archaisms should give way to modern words to serve lawyers' and non-lawyers' need. The present study however sets out to make parties in both landed and hire purchase contracts pay attention to salient lexical items that determine the strength of the legal documents. Though the study can pass for a general investigation into the language of legal document, its focus is on specific investigation of the lexico-semantic features of landed and hire purchase documents with a view to highlighting some of the nuances that are significant for meaning.

Some Linguistic Features of the Hire Purchase Agreements

Some Contractual Terms

a. ADR: an acronym that implies Alternative Dispute Resolution. A way through which disputes are resolved outside the court room. It typically entails series of negotiations, mediations and arbitrations between the parties in dispute.
b. Boiler Plate: The kind of clauses that generally feature at the end of a contract and meant to settle general matters pertaining to the contract such as choice of law, notice procedures, procedures of amendment, issues of interpretation and mechanism of dispute resolution.
c. Choice of Law: This phrase provides that parties to a contract stipulate what rule of law is to be employed for the purpose of resolution in case a dispute arises. This is peculiar to international transactions.
d. Condition Precedent: An event that, as matter of compulsion, must occur prior to the existence of a contract or contractual obligation.
e. *Force Majeure*: This implies an act of God that can always prevent one party in a contract from executing the duties owing under contract. Such acts include war, riot, earthquakes, flood, strikes and other overwhelming circumstances.
f. Intellectual Property: Right recognised by law to an individual or organization relating to intellectual, industrial or artistic work. These include patents (inventions), designs (graphics), trademarks (names or marks used to identify goods) and copyrights (rights of authorship).
g. Condition Subsequent: Any occurrence, event or act that terminates the duty of a party to perform or do his or her part in a contract.
h. Recitals: In formal written contracts, these are clauses which state who the parties are, their interests and what makes them enter into the contract. This is usually called preamble. Recitals give background information about both the contract and the parties involved in it.

i. Representations and Warranties: Parties in a contract are not under any obligation to state these explicitly. They are implied by law, and they are statements made by a party in a contract that has enforceable legal consequences. Hence, the parties in a contract must pay utmost attention to them to avoid any breach.
j. Unconsciousability: A concept that shares its rule in Equity. It permits a court of law to refuse the enforcement of a contract considered to be particularly unfair.
k. Assignment: This implies the transfer of rights or duties from one party in a contract to another. It could be only by agreement or by operation of law. Rights or duties can be transferred when someone dies or when a company is bankrupt.
l. Rescission: A contractual condition whereby there is cancellation of contract through the simple mutual agreement of the parties just before the performance of the contractual duties.

3. Data Presentation and Discussion

The data collected for this work were studied based on the lexico-semantic features of contractual agreement like cohesive ties, legal register, capitalization and archaic terms.

Cohesive Ties

Language of landed property contracts as observed is laced with the use of modals. The notion of modality is linked to the use of modal verbs such as *can, could, will, would, shall, should, may, might* and *must.* They are modal auxiliary verbs that supply information about the duty of the main verbs that they govern. They are tense-less and thus, do not follow the subject-verb agreement. Also, they do not have infinitive to- before the following verb.

The modals perform at least two distinctively different functions. While the deontic function expresses the obligation and permission, the epistemic function expresses logical probability, possibility, certainty, ability, prediction and necessity. The moment a modal verb is used to affect a situation, it is deontic modality. It however becomes epistemic when the use of any modal verb affects the expression of the speaker's opinion about a statement. For instance:

…the assignor which expression **shall** where the context so admits…
…the assignee **shall** have quiet possession and personal peaceful…
…the assignor **shall** indemnify the assignee for a plot of land…
…that the assignee **may** suffer, incur or sustain consequent…

Using the modal auxiliary verb *shall* in the statements above is intrinsically deontic in function since it expresses obligation but in a way expressing that both the seller and the buyer of the plot of land in question are bound to discharge certain obligations towards each other. Whereas the assignee (buyer) is accorded the status of a proud landlord as agreed upon in writing, the assignor also has specific obligation to perform to the assignee in the case of any unfortunate occurrence. In addition, the last statement above also presents the use of modal *may* expressing the likelihood of what happens to the assignee with an express meaning of an obligation. These meanings present the idea that the modals *shall, should* and *may* as exploited in the statements above make reference to authority and judgment of the speaker but not to their knowledge or belief. The duo of assignee and the assignor therefore are expected to pay utmost attention to their obligations as conveyed in the language of the contractual papers. In the same vein, the modal *shall* is also a recurring feature in hire purchase documents as indicated in the following instances:

…the guarantor which expression **shall** where the context so admits…
…On the 13th day of March 2018, shall pay the last…
The purchaser **shall** make weekly payment of #10,000…
... Weekly payment **shall** be paid by the purchaser…
…the seller which expression **shall** where the context…

The presence of the modal verbs *shall* in the statements above facilitate the realization of deontic meanings on the sentences. It assigns compulsory roles to the parties in the contractual agreement. The premise of this obligation is expressed through the use of the modal *shall*. The purchaser especially is compelled to pay specific amount at a given constant time. It also specifically asserts a biding action on the part of the purchaser. Any attempt to deviate from the provisions of this mutual agreement is nothing but a breach of contract. The purchaser therefore has no liberty to default in the payment for whatsoever reason. In fact, if he defaults, the same modal verb *shall* is also exploited in categorically stating the legal consequences. Consider the statement below:

…the guarantor *shall* pay the due sum to the seller.
…the purchaser *shall* release the Tricycle in good faith…
…the seller *shall* take back the Tricycle without refunding…

Furthermore, the modal *shall* express the duty of each party in a contract as exemplified in the statements above in case there is a breach of contract. The guarantor, who is the third party in the contract, is expressly made responsible for the default of the buyer who stands as the second party. This modal apart from apportioning duties to both the buyer and his guarantor also clearly states the right of the seller to retrieve the property in good condition in case the duo of the buyer and his guarantor fail to meet their obligations on time. The term of the contract is very unambiguous here as it states that the seller has legal rights to take as remedy in the case of breach. Hence, the use of the modals in legal papers of this caliber contributes greatly to the total interpretation of the language. It is also important since the modals encompass expressing permission, obligation and decision (deontic) and about possibility, necessity and prediction (epistemic). The use of modality in contracts papers relates to immediate communicative interaction between legal authority and the addressee. It generates special functions in relation to information about the function of the main verb it works with.

Synonyms as Cohesive Tie

One form of cohesive tie that is also prominent in the language of contract – both the landed property and hire purchase agreement – is the use of synonyms. Bello (2019) posits that "synonymy is context- dependent". This means that two words may have the same meaning in a particular context but not necessarily in all contexts. Legal practitioners are often wary of exploiting the use of synonyms. They therefore seek to understand every aspect that might be misrepresented or misinterpreted by the concerned parties. Consider the following extracts:

… that if the purchaser **fails, neglects** or **refuses** to pay the balance…
… the land is **lying being** and **situated at** …
… to continue to enjoy **all rights, interest, rights herein…**
… pay all governmental **levies, charges** and **taxes**…
… permit the landlord his **attorneys, agents** or **servants**…

It should be noted that synonyms as used in the above extracts serve as agents of clarity of expressions to avoid unnecessary disagreement among the parties involved in the contract. In addition, they also give room for other areas that the contract is expressly expected to cover. The terms *fail*, *neglects* and *refuses* are synonymous to one another as in …*if the purchaser fails, neglects or refuses to pay*…. In the same perspective, *all rights*, *interests* and *rights* on one hand, *levies*, *charges* and *taxes*; *attorneys*, *agents* and *servants* on the other hand are categories of synonymous terms that enhance proper interpretations. Such synonyms invariably aid the parties contracting in landed properties to make correct interpretation of the contractual language thereby reducing instances of litigation that may emanate from a breach in future.

Conjunction as Cohesive Lexical Feature

The conjunction *and* features prominently in the analysed contract documents. It seems that legal documents rely heavily in the linguistic function of this coordinating conjunction. Consider the following extracts:

…the Tricycle and had seen same… and has agreed to purchase…
…the purchaser and the guarantor… and agreed as hereunder…

…the purchaser and which price the purchaser and guarantor have agreed... and guarantee…

Conjunction *and* is being judiciously exploited in the language of hire purchase documents to achieve cohesiveness. Parties in the contract have been effectively linked through the linguistic function of the conjunction *and*. It also foregrounds the notion of contractual agreement as a binding force on the parties in the contract. In the same vein, it equally emphasizes the operating conditions in the contract as in:

…use the Tricycle for LEGAL and LEGITIMATE commercial purpose…

The two operating terms in the above are the lexical items *legal* and l*egitimate.* As provided by the law, a contract is valid only when the business is legitimate. These two terms have been brought to the notice of the parties intimating them that they are in a legitimate contract and should therefore avoid the violation of the rules that guide the operation of the contract. Writers of legal documents therefore exploit coordinating function of the conjunction *and* in most of their legal writings usually to connect various parties in contract.

Archaic Lexis

Further investigation into contractual documents reveals that legal papers are replete with archaic words and phrases of a kind that could be used by no one else but legal practitioners. One phenomenon that seems to add a touch of formality to the language of legal documents especially in contract documents is the notion of archaism. Items like *whereas, hereinafter, whereof, hereunder, hereinto,* and *herein* feature in the contract documents that are investigated in this study as in:

…herein referred to as the assignor…
…the said parties hereinto set their hands in…
…Lagos State hereinafter called the transferee…
…now this agreement witnesseth

From the examinations carried out in this study, it was discovered that virtually all contractual documents contain words or terms that seem to be out of use in the recent English language usage. Further investigations from some of the legal practitioners confirm that only law documents and writings still retain the use of such expressions with the flavour of old style of writing. Through this it manages to present the tone of formality and serious business-like face that serious contracts portend. Just as various scholars have examined, the nature of legal language is a complex one. The complexity can be observed from the kind of lexical items. The vocabulary that generally has a touch of archaism even describes modern, as a result of its historical ties with French and Latin languages. However, archaic words in legal documents add to their being less communicative, particularly to the non-legal experts, as it tends to be too formal and devoid of spontaneity in usage. This confers a herculean task on the parties in contract

… where the content so admits… instead of *in accordance with*
… hereinafter referred to as… instead of *subsequently*
… the car in his possession as the bonafide owner… instead of *a genuine owner*
… as hereunder stated,… instead of *as follows* or *as stated below*
… includes her Heirs, Successors-in-Title instead of *next of kin*

Contractual agreements, especially those of hire purchase, also abound in expressions that seem logical and not straight forward. This system is notable especially with legal papers containing extremely long sentences, conflated by means of an array of subordinating items and sectors of the language. See the conflated nature of the constructions in the following extract:

That Assignor shall indemnify the Assignee for any loss(es) …
only consideration herby furnished, that the Assignee may suffer,
incur or sustain consequent upon any adverse claim for any one or

third party or parties in respect of this transaction.
Pursuant to this Deed Assignment and in further consideration of
The sum of #xxx only now paid to the Assignor by the Assignee the
Receipt of which the Assignor hereby acknowledges,…

As displayed in the above, long sentences are preferred in the legal documents of this nature to maintain a flow of thought without a break. It also ensures clarity and cohesion of the piece. Any attempt to disjoint the long sentences might jeopardize the interest of the law in the document. The dangers inherent in long sentences as opposed to short ones are enormous. Hence, such constructions pose a serious challenge to the other parties in contract who are not legal experts. Consider the following:

… where the content so admits… instead of *in accordance with*
… hereinafter referred to as… instead of *subsequently*
… the car in his possessing as the bonafide owner… instead of *a genuine owner*
… as hereunder stated,… instead of *as follows* or *as stated below*
… includes her Heirs, Successors-in-Title instead of *next of kin*

It is obvious that the language of contractual agreement is usually self-contained, and it conveys all the necessary senses to be conveyed at any point in time and requires no close link to what follows or what has gone before.

Use of Capitalisation

Contractual documents like other legal writing also reveal the use of capitalization. Capitalization in English writing follows some rules which include the first letter of every proper noun, the beginning of a sentence etc. Language of contracts contain instances of indiscriminate capitalization of words. For instance:

IN WITNESS WHEREOF
SIGNED, SEALED AND DELIVERED
Tricycle for LEGAL and LEGITIMATE commercial purpose…
This TRIPARTITE CONTRACTUAL AGREEMENT is made…
…legal representative of the THIRD PARTY
… the Transferee ALL THAT aforesaid…

Capitalization brings certain lexical items into prominence so that the parties in the contract could pay attention to them. In most cases, as exemplified in the statements listed above, those words in capital have been prominent based on their function in interpreting the message of the contractual agreement.

4. Conclusion

Legal documents such as contractual agreements are common forms of complex papers which require close and concentrated study. This is because they are replete with legal jargons and grammatical patterns that are uncommon in everyday usage of the English language. The choice of lexical items in the language of contractual agreement as observed in that of the hire purchase and landed property investigated in this paper have been employed to convey a sense of complexity and formality in support of earlier works done by linguists such as Adegbite (1996). In addition, since every profession lay claim to certain jargons that are peculiar to it, the legal profession by its calling cannot be an exemption.

The implication of this therefore is that individuals or groups that enter into contractual commitments should as much as possible be wary of expressions that have connotations and that are at variance with their usage in every-day communication. Where even legal luminaries have fallen prey as vulnerable subject who run foul on technicalities that are spelt out by the letter of the law, the non-initiate, the 'unlearned' as the legal practitioners are often apt to describe them, should be more circumspect, especially when such language elements that are

unfamiliar are featured as binding testaments on which they append their signatures thereby binding themselves into irrevocable contractual obligations which can lead to serious litigations.

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