

A Pragmatic Analysis of Legalese: The Benue State University Experience

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Abstract. Legal language is characterised by a peculiar systematic patterning and potentialities as a viable communication system. This study is concerned with the analysis of legal language within the ambit of pragmatics. Pragmatics studies the use of language in communication, particularly the relationship between sentences, context and the situations in which they are used. The aim of this research is to undertake a pragmatic analysis of legal: A case Study of Benue State University, Makurdi, arching Speech Acts theory. Consequently, Speech Acts Theory as propounded by Austin (1962) which forms the theoretical framework for this study. It offers the analytical tool for making overt the Illocutionary Acts that is contained in discourse. Austin's theory considers utterance as an action, particularly with regard to its intention, purpose or effect. Data were obtained from primary and secondary sources, Using the descriptive and qualitative approach, data are presented in numerical analysis from 1 to 15. The study discovers that legal language is characterised by Austin's classification of Illocutionary Speech Acts. Furthermore, it concludes that legal language is directive, commissive, declarative, representative and expressive.

Key words: Legal Language, Pragmatics, Speech Acts, Discourse, Utterance and Benue State University Makurdi.

INTRODUCTION

Legalese, also known as legal language, refers to the specialized language used in legal documents and in the practice of law. Despite its importance in the functioning of the legal system, legalese can be difficult for individuals without legal training to understand. This study aims to analyze the use of legalese in the context of the Benue State University and to identify ways to make legal language more accessible to the general public.

To conduct this study, qualitative research methods such as in-depth interviews or document analysis will likely be used. Data will be collected from various legal documents related to the Benue State University and analyzed to better understand the ways in which legalese is used in this context.

The results of this study will provide valuable insights into the challenges posed by legalese and suggest ways to improve access to legal information for the general public.

Legal practitioners carry out their responsibilities in a unique way using a language characterised with its obscurity, ambiguity and complexity. Legal language is encoded authoritatively, and it is used quite strategically by lawyers in giving effect to legal documents like deeds, wills, etc. As a sublanguage (a specialised language or jargon associated with specific group-lawyers) it has the specialised features that distinguish it from other languages. As a linguistic process, language is the cognitive processes involved in producing and understanding linguistic communication. As a term, language refers to a system of words used to name things in a particular discipline, as in medicine, law, finance, aviation, and so on. Language is a written or spoken words used by the people of a particular country or area. It is a tool or code system for human communication and without it, human society is incomplete (Yul-Ifode, 2001:1).

Generally, the study of language divides along the lines of “Descriptive” and “Applied” Linguistics. Descriptive linguistics studies the theoretical framework and the concepts or phenomena of language at different levels of linguistics; it focuses on the internal structures, organisations and operations of language - being Phonetics, Phonology, Morphology, Syntax and Semantics. Applied Linguistics, on the other hand, involves the application of linguistic knowledge, concepts or theories to providing practical solutions to language-related problems. Some of the areas covered include clinical, historical, sociolinguistics, discourse analysis, pragmatics, and so on. Pragmatics emerged as a reaction against the previous formalist approach to language study. The formalist approach deprived man of the most outstanding of his ability, that is, the ability to negotiate meaning to the world instead of extracting a meaning that is already there. The emergence of Pragmatics has caused the replacement of the idea of “linguistic competence” with “communicative competence” (Yule, 1996). It is from the functional perspective of language use; which pragmatics is concerned with, that linguistic structures can be explained by reference to non-linguistic forces. Pragmatics takes language use to be whatever happens when users are doing things with language.

Furthermore, Pragmatics is concerned with the study of meaning as communicated by a speaker or writer and interpreted by a listener or reader (Yule, 1996:7). The study of Pragmatics encompasses Speech Act Theory, Conversational implicatures, Talk in Interaction and other approaches in language behaviour of which the legal language is a part of. The Judiciary is that arm of government charged with the task of interpreting the laws of the land, be it legislation, regulations, or by-laws. It includes the whole body of Judges, Magistrates, Lawyers and other Judicial officers. Our concern in research, however, is to analyse the peculiar style of legal language in the areas of pragmatics using the Speech Act Theory.

Statement of the Problem

The problem being addressed in the case study is the analysis of legalese, specifically in the context of the Benue State University. The aim is to examine the practicality and effectiveness of the

language used in legal documents and to determine if it serves the intended purpose of clearly communicating information to its intended audience. Language aims at communication, and its analysis provides an insight into how people communicate, think, feel and behave in social contexts.

The way communication is achieved in one field, in one situation, with a particular set of sentences may vary in some other fields, in some other situations, with the same set of sentences. It is very often because of this fact that one needs to dive deep into the matters of pragmatic analysis of communication. Pragmatics is the study of meaning in context, and it deals with implied meaning as opposed to the lexical meaning. Speakers of language do not use language only to say things, they also use language to do things. This can be referred to as Speech Acts.

In that light, legal language is profoundly conservative. It is known for its obscurity, ambiguity and complexity. A pragmatic analysis of legal language is therefore immensely valuable to eradicate the idiosyncrasies and ridiculous nature of language employed in it. Consequently, this research uses Searle's (1969:3) classification of Speech Acts to unravel the actions performed in the domain of legal discourse.

Research Questions

Based on the stated aim and objectives, the following research questions could be formulated for the study.

- i. What is the nature of the language used in the legal documents of the Benue State University?
- ii. How comprehensible is the language used in these legal documents for stakeholders?
- iii. How does the use of legal language affect the understanding and interpretation of legal documents by stakeholders
- iv. What recommendations can be made for improving the clarity and accessibility of legal language in the legal documents of the Benue State University?

METHODOLOGY

Research Design

Research design is basically the framework of a research on which the research's objectives are built. This study is qualitative in nature so as to provide a more comprehensive picture of each aspect of the study through the speech arts theory.

Qualitative methods are probably the oldest of all scientific techniques, with ancient Greek philosophers, qualitatively observing the world around them and trying to come up with answers which explained what they saw, Achor and Ejogba (2006). Qualitative methods are often closely allied with interviews, survey design techniques and individual case studies, as a way to reinforce and evacuate findings over a broader scale.

Instrumentation and Source of Data

Basically, there are two methods of sourcing information in research, the primary and secondary methods. Primary sources of data are the information a researcher generates through personal interviews, questionnaires, or schedules to test hypotheses. Secondary sources of data on the other-hand are information sources such as textbooks, magazines, articles, scholarly journals, and other sources that relate to the research.

In attempting to answer the research questions, the research design techniques were fully employed with the proper use of a variety of data sources such as interview, theoretical models, related literature and relevant media, as the primary source of legalese information dissemination by students of Benue State University Makurdi in recent years is focused on campus, court moot, media and traditional media such as newspapers. Age (2013:54). For this research, journals, text books and online sources have been used alongside oral interviews, to answer the research questions.

Method of Data Collection

Through purposive sampling, fifteen (15) legalese were selected for research. The relevant parts are placed at each strategic point in the cause of the analysis. Descriptive approach reveals the essential elements in the data, while the analysis explains the hidden meanings of the data. This researcher adopts J.I Austin's (1962) classification of speech acts to analyse the illocutionary acts in legal language. The features used in the analysis involve the exemplification and explanation of illocutionary acts (directives, declaratives, expressives, commissives and representatives).

Data Presentation and Analysis

The data collected in the course of this research are analysed as objectively as possible using detail explanation, numbers and percentage. The data used for these analysis includes fifteen selected legalese.

Theoretical Frame Work and its uses in the Analysis

Pragmatics, the study of language use in context, can be approached through various theoretical frameworks. The best one for "pragmatics analysis of legal depend on the specific research questions and goals of the study and this research questions adopt the Speech Act Theory: This theory explores the ways in which utterances perform actions, such as making requests, giving orders, making promises, etc.

Common Legalese

In approaching the data analysis, we should first clarify what we mean by "language of law" . Legalese refers to the technical language and specialized vocabulary used in legal documents. It often contains complex sentence structures, Latin phrases, and legal terminology that may be difficult for non-lawyers to understand.

Most obviously, this term refers to “technical”, legal language (i.e. the combination of terms of art and ordinary words used in legal documents such as constitutions, statutes, wills and contracts). But this chapter uses the term also to refer to the pragmatic kind of discourse that are “legal” in a wider sense. We discuss utterances and phrases whose meaning is disputed in court or in legal proceedings leading to trial (i.e. content adjudication of contested language, for example what an alleged defamatory or threatening statement means, or what is implied by an advert against which a complaint has been made). Such discourse includes arrest notifications, police interviews, jury instructions, courtroom advocacy, cross-examination, spoken courtroom rituals and judicial opinions made up of a complex mix of spoken and written styles.

The role and significance of Pragmatics differs contextually. In legal ‘construction’, the name given to a process of ascertaining meaning for some statement of law to a defined legal standard, both the aim and interpretive process to be applied are part of a specialised body of techniques (Bennion 2001; Twining and Miers 2010:24). In content adjudication, by contrast (Durant 2010:2), the aim is to establish the “ordinary signification” of a contested utterance typically to the standard of an average, reasonable general user of the language. Pragmatic analysis may be persuasive as to the likelihood of a particular interpretation being ascribed on a given occasion, if a court allows expert assistance. The linguistic analysis is nevertheless not concerned with fundamental issues of law, and does not confer legal authority on any particular, preferred meaning.

Thus, the analyzed legalese were adopted from the Benue State University moot court and day to day communication and interactions with Benue State University law students. Legalese 1: "Heretofore" - refers to something that has happened or existed previously. Example: "The parties heretofore agreed to the terms of the contract."

Legalese 2: "Herein" - refers to the current document. Example: "The terms and conditions outlined herein shall be binding."

Legalese 3: "Aforesaid" - refers to something previously stated or mentioned. Example: "The aforementioned property shall be transferred to the party of the first part."

Legalese 4: "Party of the first part" - refers to one of the parties involved in a legal agreement. Example: "The party of the first part shall pay the sum of #20,000 to the party of the second part."

Legalese 5: "Whereas" - used to introduce the reasons or context for a contract or agreement. Example: "Whereas the parties desire to enter into a business agreement, they hereby agree to the following terms and conditions."

Legalese 6: "Inter alia" - Latin for "among other things." Example: "The defendant, inter alia, is charged with embezzlement and fraud."

Legalese 7: "Pro se" - Latin for "on one's own behalf." Example: "The defendant will appear pro se and represent himself in court."

Legalese 8: "De facto" - Latin for "in fact." Example: "The defendant was de facto in charge of the company, even though he did not hold an official position."

Legalese 9: "Ex parte" - Latin for "on behalf of one party." Example: "The judge granted the plaintiff's request for a temporary restraining order ex parte, without hearing from the defendant."

Legalese 10: "Habendum" - a Latin term used in deeds and property law to describe the term of an estate. Example: "The habendum clause of the deed states that the property shall be transferred to the grantee for a term of 99 years."

Legalese 11: "Inter vivos" - Latin for "between living people." Example: "The inter vivos trust was established to manage the assets of the grantor during his lifetime."

Legalese 12: "Mutatis mutandis" - Latin for "having changed what needs to be changed." Example: "The agreement shall apply to all subsidiaries of the company, mutatis mutandis."

Legalese 13: "Nolo contendere" - Latin for "I do not wish to contend." Example: "The defendant entered a plea of nolo contendere, which means he neither admitted nor denied guilt but agreed to accept the punishment."

Legalese 14: "Pursuant to" - used to indicate compliance with a law, regulation, or agreement. Example: "Pursuant to the terms of the contract, the parties agree to mediation in the event of a dispute."

Legalese 15: "Quantum meruit" - Latin for "as much as is deserved." Example: "The plaintiff is entitled to recover damages in the amount of quantum meruit, based on the value of the services rendered."

Discussion of Findings

Findings of the study revealed that all the respondents are law students of Benue state university Makurdi and were pragmatically responding according to the law jargon and register. The researcher however provides a linguist's view on the Legalese rather than a lawyer's view of linguistic problems, so its aim is to test the occurrence of pragmatic notions in legal language. The analysis demonstrates that the language of the law shares most of the pragmatic properties of everyday language, such as presupposition, deixis, implicature and speech acts. Moreover, the language of the law and everyday discourse share socio-pragmatic characteristics, e.g., the power-solidarity distinction that underlies politeness strategies, forms of address, and the division between powerful and powerless language. However, legal discourse does differ from everyday discourse in that it is much more rigid structurally. To examine legal pragmatics further, an interdisciplinary approach that combines pragmatics, discourse analysis, and intercultural communication would offer not only an insight into the structure of court trial discourse and its functions, but also a broader intercultural perspective on various judicial systems.

Major Findings of the Study

The major findings of this study reveal that there is a significant difference between legalese and everyday language and the following components were deduced :

1. Jargon: Legal writing often uses specialized terms and expressions that are specific to the legal profession and not commonly understood by the general public.
2. Complex sentence structure: Legal writing often employs long and complex sentences that can be difficult to understand without prior knowledge of the legal system and its terminology.
3. Formality: Legal writing is typically formal in nature and follows strict grammatical and syntax rules.
4. Precise language: Legal writing is often very precise and avoids using vague or ambiguous language, as the wording of legal documents can have significant consequences.
5. Repeated language: Legal documents often include repeated language, such as boilerplate language, that is used in many similar documents to save time and reduce the risk of errors.
6. Citations: Legal writing often includes references to laws, regulations, court cases, and other legal authorities to support arguments and establish the legal basis for a particular position

Summary

Pragmatics is a branch of linguistics that studies the ways in which context contributes to meaning. In the context of legalese, pragmatics analysis has examined how the use of legal language within Benue State University Makurdi campus is influenced by the context in which it is used. This includes factors such as the audience, the purpose of the document, the culture and legal system of the jurisdiction, and the type of legal document being used.

For example, a contract written for a business transaction in Benue State University Makurdi may use a different language and terminology than a contract written for a similar transaction in the outside the campus or in another state or country. In addition, the language used in a legal contract may be different from that used in a legal brief or opinion, as the purpose and audience of these documents are different.

In the pragmatics analysis of the legalese of Benue State University Students, the researcher considers the intended meaning of the language used, as well as any implications or consequences of that language. For example, the use of certain terms or phrases in a legal contract may have specific legal consequences, so it's important to choose language that accurately conveys the intended meaning and accurately reflects the intentions of the parties involved.

The researcher seek to understand how the context in which legal language is used contributes to its meaning, and how this meaning is conveyed to the intended audience. This understanding can help to ensure that legal language is used effectively and appropriately, and that the intentions and rights of the parties involved are accurately reflected in legal documents. “Hereinafter , Pursuant ,

Notwithstanding, Herein, aforesaid, party of the first part, whereas, inter alia , pro se etc were used as the legalese and analyzed appropriately.

Conclusion

In conclusion, while the use of legalese provides clarity and precision in legal writing, it also creates barriers to access to justice for non-lawyers/ students. Efforts have been made to simplify legal language and make it more accessible, but the use of legalese remains widespread among law students of Benue State University Makurdi.

Despite these criticisms, the use of legalese remains widespread in the legal profession. One reason for this is that many law students and lecturers believe that legalese provides clarity and precision in legal writing and communication, and that it helps to avoid ambiguity and misunderstandings in legal documents.

This study reveals that as speech is the act of communication, a speech act is an utterance that has a performative function in language and communication. Since illocution is the intention the speaker has to utter the statement, then the intended meaning of the speaker depends on the context of use. In other words, ‘Who is speaking? To whom is he/she speaking? What circumstance led to the utterance? When is he/she speaking?’ This research has clearly shown that that legal language is replete with the classification of speech acts.

Recommendations

This study provides some general recommendations for the use of legalese by students. Students should familiarise themselves with the basics of legal language and terminology: Legalese can be difficult to understand, so it's important to have a basic understanding of the most commonly used terms and phrases. Mosrso, when writing in legalese, it's important to consider who your target audience is. Legal language may not be suitable for a general audience, and it's important to consider the level of understanding of your intended audience.

Furthermore, the use of concise Language is often characterized by its complexity, it is important to use clear and concise language whenever possible. This will help to ensure that your message is understood by your audience. The use of legalese may vary depending on the context in which it's being used. For example, the language used in a legal contract may be different from that used in a legal brief or opinion. If you are unsure about the use of legalese, it's always a good idea to seek the assistance of a legal professional. They can provide you with guidance on the appropriate use of legal language and help you avoid making mistakes.

The use of legalese should be approached with care and consideration. By familiarizing yourself with the basics, knowing your audience, using clear language, and seeking professional assistance when necessary, you can ensure that your use of legalese is effective and appropriate.

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