

The Lexical Features of Contract English

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Abstract: A contract refers to an agreement establishing, modifying and terminating the civil rights and obligations between subjects of equal footing. The language for contract is different from that for basic English or literature. This paper, based on the analysis of typical examples, discusses the lexical features of contract English from the perspectives of formal words, archaisms, technical terms, common words with uncommon meanings, reduplication of words, deliberate use of vague words, and avoidance of pronouns etc. Finally, this paper comes to the conclusion that although in English speaking countries, more and more people ask for the use of plain English in contract, most of the contracts that we can read today have the lexical features of archaic words, and technical terms etc.

Key words: contract; contract English; English contract; lexical features

1. Introduction

With China's carrying out the policy to promote reform and opening to the outside world, the establishment of market economy, the rapid development of our communication with foreign countries and China's entry into the WTO, there are more and more opportunities for us to communicate with those countries whose official language is English. When communicating with individuals, legal persons or other organizations from the English speaking countries, we often need to sign English contracts with them. English contracts are becoming more and more important in our daily life.

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Every field of expertise develops its own language features (Gibbons, 2003: 36). Legal English means the language of the law of England, America, and some other countries whose official language is English. These common law system countries have a history about several hundred years to express law in English. Generally speaking, contract English is an important branch of legal English, which is the language of the contract of England, America, and some other countries whose official language is English. To be more exact, contract English here refers to English used in civil, commercial contract in the countries whose official language is English. The language for contract is different from that for basic English or literature. The lexical features of contract English are very unique.

Lord Mansfield, one of the most famous English judges, once observed that "most of the disputes in the world arise from words". He told us the significance of lexicon. If one can command the lexicon in contract English quite well, it may be easier for him to read the English contract. It is highly possible that he could study and understand English contracts better than those who know little about it.

2. The Lexical Features of Contract English

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In *The Five Clocks*, Martin Joos advances five stylistic varieties in English: the Frozen Style, the Formal Style, the Consultative Style, the Casual Style and the Intimate Style. The language habits of the profession cause lawyers (contract drafters) to frequently choose one means of expression over other possibilities. The special expressions used in English contract are difficult for non-professionals to understand. In order to understand them, non-professionals need a process of interpretation by professionals. This process is the process of thawing or unfreezing. So the style of Contract English can be considered as the first one, which is the Frozen Style. The frozen style of Contract English is typically embodied in its lexicon.

2.1 Formal words

Not everyone knows what “initiate” or “terminate” means, but virtually any speaker of English understands “begin” and “end”. The formal words like the former ones which are rarely used in general English, used in contract. Formal language is one of the traits of the contract lexicon. There are a lot of formal words, here we list just a small sampling: approximately, commence, complete, construe, convene, employ, notify, present etc.

(1) The Agreement shall commence on this day and automatically terminate upon the bankruptcy or insolvency of either of the parties hereto.

(2) The term “Effective date” means the date on which this Agreement is duly executed by the parties hereto.

In the two sentences cited above, “commence”, “terminate” and “executed” mean respectively: begin, end, and signed. The former words are more formal than the latter ones, which make the contract sounds formal.

2.2 Archaisms

Language changes continually, but the language of the law is conservative, tending to resist change and changing (Hiltunen, 1990: 17). As D. Crystal and D. Davy (1969: 207) write, “It is especially noticeable that any passage of Legal English is usually well studded with archaic words and phrases of a kind that could be used by no one else but lawyers.” Such old-fashioned words are archaisms. Lawyers tend to believe that these archaisms enable clearer and less ambiguous reference and give greater weight and authority to the language (Gibbons, 2003: 41). Words like “herein” and “therein” may sometimes lead to economy of expression when they replace a longer phrase like “in this document” or “in that clause” (Tiersma, 1999: 94).

As a typical legal document, contract preserves some archaic words, which are daily bread for the lawyer but to which most non-lawyers are exposed on infrequent occasions. In contract, the typical used archaisms are compound adverbs formed usually by adverbs, such as here, there, or where, to which prepositions, such as after, at, by, from, in, of, to, under, upon or with etc., have been suffixed. These words were common in medieval English. Rather than saying “under it” or “under that”, a speaker of Middle English could say “hereunder” or “thereunder”. And instead of using “with what” or “with which” in questions, Middle English speakers would generally say “wherewith”.

In addition, legal English has retained several morphological forms that have died out in ordinary speech. One of the archaic morphological forms is “witnesseth”. One can still encounter the verb form “witnesseth” in contracts of insurance: This policy witnesseth that.... In fact, “witnesseth” is now often stripped of any context and placed at the beginning of contracts, as a totemic signal that rough means, “This is a legal contract; the following are its terms” (ibid: 87).

Another common and ancient legalism is the use of “said” as an article or demonstrative pronoun:

Lessee promises to pay a deposit. Said deposit shall accrue interest at a rate of five percent per annum.

Here, “said” could easily be replaced by “the” or “this”. Used in this way, it is clearly an oddity from the point of view of Standard English. “Said” may also be used as an adjective: “the said” deposit is equally possible, and equally archaic. Here is one more example:

In case no settlement can be reached, the case under dispute may then be submitted for arbitration to ... in accordance with the Provisional Rules of Procedures promulgated by the said Arbitration Commission.

Such kind of words reflects the regular, solemn, conservative, rigid and authoritative style of contracts and the use of which can avoid the repetition and redundancy. One of the main justifications for continued use of antiquated vocabulary is that it is more precise than the modern equivalent (*ibid*). Using antiquated terminology bestows a sense of timelessness on the legal system, as something that has lasted through the centuries and is therefore deserving of great respect (*ibid*: 97). And archaic language is considered more formal than everyday speech. (*ibid*: 95)

2.3 Technical terms

In the area of words technicality is strongly marked (Gibbons, 2003: 39). Contract English contains a large number of words that are not used at all in ordinary speech. The technical meaning of words in the contracts has often stabilized, clarified, single and precise.

In contract, technical terms are widely used such as: defect, remedy, jurisdiction, damages and/or losses, indemnities, tenancy, etc. In the following example the underlined words are commonly used technical legal terms in contract English.

All disputes in connection with this Contract or the Execution thereof shall be settled friendly through negotiations. Where not settlement can be reached the disputes shall be submitted for arbitration. If the Sellers are the plaintiff the arbitration shall take place in Stockholm. Each party shall appoint an arbitrator within 30 days after receipt of notification from the opposite party and the two Arbitrators thus appointed shall jointly nominate a third person as umpire to form an Arbitration Committee. The said umpire shall be confined to the citizens of Swedish nationality. If the Buyers are the plaintiff the arbitration shall take place in Beijing and be conducted by the Arbitration Committee of the China Council for the Promotion of International Trade in accordance with the Provisional Rules of Procedures promulgated by the said Arbitration Committee. The decision of the Arbitration Committee shall be accepted as final and binding on both parties. Neither party shall seek recourse to a law court or other authorities to appeal for revision of the decision. Arbitration expenses shall be borne by the losing party.

In this article there are 179 words, among which more than 18 words are technical terms. That can show us the frequent use of technical terms in contract.

2.4 Common words with uncommon meanings

Words used on any occasion are called common words. In contract, there are some common words used in specialized style, hence becoming technical terms. In this situation, they are used not for their common meaning, but for their special meaning.

“Prejudice” as a common word (noun), means an unfair and often unfavorable feeling or opinion formed without thinking deeply and clearly or without enough knowledge. But in contract, “prejudice” means loss of any rights. In ordinary speech, “same” usually implies “comparison” to a similar object or person; that implication is lacking in the contract sense, which refers to “the thing mentioned”. For example:

(1) Save as supplemented and varied by Clause 2, the Management Agreement shall continue in force and effect in all other respects. The Management Agreement and Clause 2 shall be read and construed as one document and Clause 2 shall be considered to be part of the Management Agreement and, without prejudice to the generality of the foregoing, where the context so allows, references in the Management Agreement to “this Agreement”, however, expressed, shall be read and construed as references to the Management Agreement as supplemented and varied by Clause 2.

(2) When one Party to the Company assigns all or part of its investment, the other party shall have the preemptive right to purchase the same.

More words of this kind are listed below: action, article, award, consideration, party, satisfaction etc.

2.5 Reduplication of synonyms, near-synonyms or relevant words

Another typical feature of contract English is joining together words or phrases with the conjunctions “and” and “or”. For centuries, lawyers have strung together synonyms, such as furnish and provide, fulfill or perform, transferable or assignable, null and void, in full force and effect etc.

One study found that binomial expressions (a technical linguistic term for two parallel words joined by a conjunction, like “any” and “all”) were used five times as often in legal writing as in other prose styles (Tiersma, 1999: 60).

The reduplication of synonyms, near-synonyms or relevant words in contract can avoid or reduce the ambiguity and it can also seek accuracy, emphasis and completion of meaning. When synonyms or near-synonyms are connected with “and” or “or”, the second part is often used to reaffirm and complement the first part. If there is a dispute, the reduplication of synonyms or near-synonyms can help the parties to understand the precise meaning of a certain word. A different reason for conjoined phrases and word lists is that they have a certain rhetorical value. They may give an air of elegance or significance to what we say.

The following paragraph is excerpted from an American property transfer contract.

FOR VALUE RECEIVED, the undersigned does hereby sell, transfer, and set over to _____ all his right, title and interest in and to a certain contract dated _____, 19____ by and between the undersigned and _____, a copy of which is annexed hereto.

From this long sentence, we can find “sell, transfer, assign and set over” and “right, title and interest” are two groups of synonyms or near-synonyms, while “in and to a certain contract” and “by and between” are two groups of relevant words.

There are many more synonymous or synonymous pairs commonly used in contract: nouns: terms and conditions, import duty and tax, customs and usages, “alteration, modification or substitution”, compensation or damages, “loss, injury, or damage”, etc.; verbs: misuse or abuse, altered or amended, repair or replace, alter and change, bind and obligate, etc.; adjectives: sole and exclusive, final and conclusive, etc.; prepositions: over and above, from and after, etc. The reduplication of synonyms, near-synonyms or relevant words makes the contract English more formal, archaic and conservative.

2.6 Deliberate use of vague words

The language of the law is sometimes characterized as one of “extraordinary precision”, and “unambiguous” (quoted in Mellinkoff, 1963: 21). Precision is the driving force for the unique characteristics of contract English, which is critical to reducing the likelihood of misinterpretation. But precision is not necessarily extreme clarity—it may also involve selecting the appropriate level of vagueness or flexibility. (Gibbons, 2003: 38)

Exactitude and completion are achieved by using both the accurate and vague words together. So the vague words are necessary for contract. For example:

Party A agrees to help Joint Venture to invite and recruit Chinese experts, technicians, workers and other personnel and Party B agrees to help Joint Venture to invite and recruit foreign experts.

In this example, the expression of “other personnel” is vague. After listing the different kinds of personnel, such as experts, technicians, workers, the expression of “other personnel” is very general, which includes all the personnel recruited by Party A. Without the expression of “other personnel”, this clause sounds not so precise and complete. The parties use the vague words with the intent to make the contract more operative.

2.7 Avoidance of pronouns

In everyday speech and writing, we tend to introduce to a participant for the first time by clear reference to the outside world such as Linda Javanovic, The Bell Telephone Company, or Macintosh Power Book 1400c but

thereafter, so long as it is clear, we will prefer back using pronouns such as “she” and “it” (ibid: 63). However, in contracts pronouns are mostly avoided because pronouns can have ambiguous reference. In contract drafters are inclined to repeat a name or full noun over and over.

Avoiding pronouns makes sense in contracts. It’s very certain for the parties to know clearly what or who this noun refers to. It can make the sentences sound wordy but very well-ascertained.

In a standard football player contract, for example, there are two parties (the Player and the Club), and an interested third party, the National Football League (the League). The player’s duties under the contract are triggered by acts of the club and the league, and it is therefore important to keep these parties distinct, as is done in this excerpt:

Player will report promptly for and participate fully in Club’s official pre-season training camp, all Club meetings and practice sessions, and all pre-season, regular-season and post-season football games scheduled for or by Club. If invited, Player will practice for and play in any all-star football game sponsored by the League. Player will not participate in any football game not sponsored by the League unless the game is first approved by the League.

Obviously, whether the club or the league sponsors or schedules an event may matter; using nouns instead of pronouns makes this clear. Thus, the player must attend club meetings, but not league meetings. Use of “it” or “its” would create ambiguity, because there are two possible antecedents for that pronoun: the club and league.

3. Conclusion

The language of legal texts is generally complicated and technical, and, therefore, difficult for the layman to understand. Contracts have no exception. The idea of making legal language easier to read and understand is not new. The notion that people have a right to understand legal documents that affect their rights and obligations ultimately led to the Plain English Movement (Tiersma, 1999: 220).

The plain language movement is attracting attention around the world. Although in English speaking countries, more and more people ask for the use of plain English in contract, most of the contracts that we can read today have the lexical features of archaic words, and technical terms etc. As the learners of contract English, our attitude towards the lexicon of contract English should be “to learn and to improve”. “To learn” means to learn the traditional expressions of contract English; “to improve” means to try our best to better the traditional expressions of contract English.

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