Hedging in Professional Legal Texts

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ABSTRACT
This paper examines hedging as a discourse strategy in professional legal texts. It investigates the incidences hedging in the selected legislative texts and highlights how hedges affect the comprehension of professional legal texts by the lay audience. Professional legal texts are addressed to the legal professionals and legal administrators. Very often, lay audience considers these texts as inexplicit for laying down the laws. The analysis of the texts in the corpus revealed that professional legal texts have a lot of hedging devices, which contribute to the inexplicitness of the texts. The texts, which are supposed to be explicit so that the lay audience can understand them, are riddled with hedges. The common hedging device found are the conventional hedging devices such as may, if, could, would likely and passivizations.

1 Introduction

In recent times there has been a serious drift away from the teaching of general English to the teaching of English for Specific Purposes. It is an approach to the teaching of English in which all decisions as to content and methods are determined by the learner’s reason for learning. This resulted to a popular slogan in ESP “tell me your problem and I will tell you the English you need.” (Hutchinson and Waters 1989)

Anthony (1997), however, observes that it is not clear where ESP courses end and General English begin. Numerous non–specialist ESL instructors use an ESP approach in that their syllabi are based on analysis of learner’s needs and their on personal specialist knowledge of using English for real communication,

ESP is a multifaceted concept likened to a tree with many branches. This analogy of a tree with many branches explains the fact that people need English language to function effectively in different fields of human Endeavour. This also means that variation exists not only between General English and ESP but also within ESP itself. The audience or learner’s being the primary focus in the production of ESP materials has given birth to the study of different varieties of ESP. They include: English for occupational purposes (EOP) and English for Academic purposes (EAP). Other branches of English for Academic Purposes are English for Science and Technology (EST), English for Social Sciences (ESS), English for Economics (ES), English for Psychology (EP) et c. Other branches of English for Academic Purposes are English for Technicians (ET) and English for secretaries.

What distinguishes General English from English for Specific Purposes is not the content and the learner’s needs but the purpose of learning. As distinguished by Hutchinson and Waters (1989), General English is taught in primary, post primary schools and tertiary institutions usually for examination purpose, while ESP is usually taught to adult learners mostly outside school.
Variation in ESP does not only exist within the types but also in topics or phenomenon. Hedging is one of the topics that has been studied by ESP specialists for long from different perspectives. Hyland (1998) for instance examines hedging in Scientific research articles, Meyers (1996) examines hedging and textual communication functions in medical written English. Skelton (1988) investigates care and maintenance of hedging among others.

2 Procedures for investigation

Two Statutes books of the Federal Republic of Nigeria form the corpus for analysis. The selection was based on accessibility and the extent to which they are recognized as statutes. The 1999 Constitution of the Federal Republic of Nigeria and the Criminal Code Act CAP.77.Laws of the Federation 1990 were selected and studied in order to identify the hedges using taxonomy. Linnaeu’s animal taxonomy was applied to have a systematic description of the hedging devices. Taxonomies of hedging were therefore set up to aid the investigation and description of hedges in the two statute books. Hedging devices then were classified as follows:

i Markers of conventional hedges.
ii Hedging by conditional clauses (if).
iii Hedging by particles.
iv Hedging by passives.

3 Brief on legal language

The language of the law is distinctive and its lexical and syntactic structure owes much to traditional forms of English. Its conservatism is linked directly to the need for unambiguous that has already been tried and tested in the court. By retaining traditional lexis and syntax, lawyers can be confident that the language of the law is consistent and precise (Thorne 1997). Legal language is a domain of language for occupational purposes and the target audience is experts in the fields. For long linguistic formulae has been developed for the purpose various kinds of legal transaction. This implies that legal language is not spontaneous and neither is it idiosyncratic. It is a predefined and pretested language which sticks to jargons that only legal experts are familiar with.

A statute refers to set of rules or rules conduct that has to be observed by certain group of people. The set of rules are policies that the Government makes which establish general principles for guidance and regulating the society. A statutes book is an official document which contains the rights and obligation of citizens or people of a given organization or institutions. As a type of legal language, statutes have legal experts as the target audience. The way information is structured in statute books seem to mystify the lay audience whose lives are directly affected. One of the ways writers or speakers makes reservation of meaning or intention is through the use of hedging. This study intends to investigate and prove if hedges are used in professional legal texts. If they exist, what are their implications for communication outside the legal profession?

4 Concept of Hedging

Hedges are cautious words, notes, and expressions applied by speaker or writer to warn the listener or reader about how much of what is being said or written should be taken. When such devices are used in communication the speaker or writer is hedging (Osisanwo 2003). Hedging is consciously or deliberately done in writing or speaking to avoid being explicit and categorical. Hedged expressions are ambiguous because they open to more than one interpretation. Hedging in this sense refers to any statement or expression made deliberately, ambiguous or equivocal as the speaker’s intention is to avoid being committed. (Webster New Riverside Dictionary 1984)
Hedging is a tactical manipulation of language so as to shone comment or being direct. Meyers (1989) sees it as a polite means of responding to a question or any issue. Hedges help a writer or speaker not is rude but polite though negatively. The audience is normally left in doubt and uncertainty. Hedging can be realized through the use of different linguistic forms such as conditionals, epistemic, verbs, modals, concessive conjuncts e.t.c (cf Palmer1986, Lyons 1977, Fakuade 2000) 
Hedges as viewed by these scholars above are statements made by a writer or speaker so as not to make the listener or audience feel offended. Hedges are ambiguous and open ended and simple linguistic monopoly employed by a writer or speaker to make the audience feel satisfied, while the speaker or writer remains uncommitted. Hedges are therefore statements whose meanings can rarely be closed or restricted, used as polite means of responding to a question or issue, presenting unproven claims consciously while maintaining communication flow open and relationship cordial.

4 Professional legal text
Legal texts as described by Finke (2004) apply to what lawyers call “primary source of law”, that is, Codes, Statutes, Wills, Regulations or Court cases, the work product of many different types of sovereign either presently in force or of historical value. Finke further notes that when looked at it from different perspectives, legal texts refer to instruments created to determine rights in private transactions such as Contracts, Wills and Deeds.

Legal texts do not only refer to refer to primary sources of law but also any scholarly writing on law such as articles in legal journals Newspapers. Legal documents created within legal context in order to be used by legal practitioners to determine legal rights are called professional legal texts. While those created within or outside legal context to inform or educate the lay audience are called popularized legal texts. In other words, professional texts are innovative the professional ones are informative.

Kurzon (1989) observes that Contracts, Wills and Deeds have frozen styles. They are not written a fresh every time that the lawyer wants to draw up. The lawyer uses the form books as referred to in the profession in which paragraph or paragraphs of documents are set out and its up to the lawyer to chose the appropriate paragraph or paragraphs for the particular document he or she is drawing up. All that the lawyer has to do is to is to add to these documents personal data of the person or persons involved. Professional legal texts as presented by aforementioned scholars are created to be used by legal practitioners or addressed to legal practitioners. This agrees with Parrent(1994) and Halliday (1975,1978) cited by Butler(1985) that a particular text product in a particular context or situation is the product of the actualization of various choices made from the alternative meaning potentials in the type of text.

5 Analysis
The analysis was carried out using the taxonomy outlined in section two of this paper. As the analysis was done manually, no attempt was made to provide statistical information as regarding the number of hedging devices found in each text. The texts were surveyed and samples of hedges found were extracted and discussed. A descriptive and discursive

5.1 Conventional hedges
They refer to hedging by using epistemic verbs or modal verbs. Osisanwo(2003) refers to them as verbal hedges. The following are examples drawn from the text
(a.) Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by any injury to his reputation.
(b) If the owner of any animal shall be guilty of cruelty within the

Meaning of this chapter, to any animal, the court upon his Conviction thereof may if he thinks fit— (Criminal Code Act CAP 77 chapter)

(c). House of Assembly may by law make provisions for the establishment of a contingencies for the state and for authorizing the governor if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the fund to meet the need. (Constitution of Nigeria 1999)

(d). The president may by directions in writing and subject to such condition she may think fit, delegate to any member of the armed forces of the federation. (Constitution of Nigeria 1999)

(e) The senate or House of Representative may appoint a committee of its members for such special or general purposes as in its opinion would be better regulated and managed by means of such committee; and may by resolution, regulation or otherwise, as it thinks fit, delegate functions exercisable by any such committee. (Constitution of Nigeria 1999)

(f) Any person who, having while out of Nigeria procured another to do or omit to do in Nigeria an act of such a nature, that if he had himself done the act or made the omission in Nigeria, he would have been guilty of an offence, after words comes into Nigeria, by such coming to Nigeria guilty of an offence of the same kind, and is liable to the same punishment as if he himself had done the act or made omission in Nigeria. (Criminal Code Act CAP 7 chapter 51)

(g) The authority may at any time by order make such modification in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this constitution. (Constitution of Nigeria 1999)

5.2 Hedging realized by (if) clauses.
These are clauses expressing hypothetical statements which mark the writer’s stand. Some instances from the documents are:

(a) If the office of chief justice of Nigeria is vacant or if the person holding the office is for any reason unable to perform the functions of the office, then until a person is been appointed to and has assumed that office— (Constitution of Nigeria 1999).

(b). If the federation is at war in which the territory of Nigeria is physically involved and the president considers that it is not practicable to hold elections, the national assembly may by resolution extend the of four years mentioned in subsection one of this section for from time to time but not beyond a period of six months at any one time. . (Constitution of Nigeria 1999)

(c) If the appropriate minister is of opinion that it would be in the public interest to do so, he may order prohibit the importation of all publications published by or on behalf of any organization of persons specified in the other

(d) A member of any of the bodies. (Constitution of Nigeria 1999) shall cease to be a member if any circumstances arise that he is not a member of the body would cause him to be disqualified for appointment as such a member---- (Constitution of Nigeria 1999)

A person who attempts to procure another to do an act or make an omission of such a nature that if he himself were to do the act or make omission he would be guilty of an offence, is himself to be deemed guilty of attempting to commit such offence and to be punishable accordingly--- (Constitution of Nigeria 1999)

5.3 Hedging Realized by Passive (Agent less)
These are normally realized through thematic structuring where by the actor is always obscured. In legal discourse this enables legal draftsmen to make generic statements. This is because laws are normally laid for group of people rather than for individuals.
(a) Where any advance is made in accordance with the provisions of this section, a supplementary estimate shall be presented and supplementary appropriation bill shall be introduced as soon as possible for replacing the amount so advanced.

(b) The composition of the government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect Federal character (Criminal Code Act Cap 77 chapter 7).

(c) Any person who has been tried, and is convicted or acquitted, on a change of any of the offences here in before in this chapter defined, shall not be after word prosecuted upon the same facts for the offence of treason.—(Criminal Code Act Cap. 77 chapter 7)

(d) Any person is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.—(Criminal Code Act Cap. 77 chapter 7)

(e) Where under an act of the national assembly, tax or duty is imposed in respect of any of the matters specified in item D OF PART11 of the second schedule to this constitution, the next proceeds of such task or duty shall be distributed among the states on the basis of derivation and—(Criminal Code Act Cap. 77 chapter 7)

6 FINDINGS AND DISCUSSIONS

The analysis carried out does not claim to represent legal formbooks in general as there are many varieties. It merely demonstrates instances of hedging in professional legal documents. The major findings as exemplified from the two documents are: Conventional hedges which occur with modal auxiliary predominantly. Hedging by auxiliary verbs as exemplified from the two documents does not express the attitudes of the writer but uncertainty tentativeness. This means that legal drafters hedge by using modals to provide some conditions warranting action to be taken or not to be taken. Hedges realized by ‘if’ conditional clauses also occurred frequently. The ‘if’ conditional clauses are used to lay down the law subject to certain actions, happenings or existence of something. Hypothetical situations which mark the stand of the law on given issues are provided through the use of this type clause. They prevail or take effect only on the fulfillment of the provided conditions.

The third hedging device noted from the two documents is realized by passives. Though they are not used frequently, they use to make the law generic through obscuring the actors. This hedging device is also used to make delicate statements by putting emphasis on actions/information rather than the actor.

The analysis carried out has shown that only three out of hedging devices in the taxonomy are realized in the two legal regulations form books. The hedging devices therefore do not represent the adopted taxonomy. It has however been able to establish the fact that hedging exists in even in legal documents in which categorical and clear statements are expected to be found. This is not surprising as many studies have proved that professional legal texts are have complex structures and are addressed to the legal professionals. This however is not expected to affect regulations the lives of the lay audience are much affected by them.
7 Conclusion

The analysis carried out on the two documents revealed that hedges abound in legal formbooks. Hedging as found in the two documents are mostly conditions that make the law takes effect and binding or not binding. Conventional hedging auxiliaries for instance are used frequently in statutes. May for example is used to state what you can do, while shall states what you should not do. Secondly, hedging is a means by which delicate statements are made while obscuring the actor. This is achieved by the use of passive constructions as hedging device. Hedges enable legal draftsmen to lay down the law with some preservations and confide rights and obligations as mostly found in the 1999 constitution of the Federal Republic of Nigeria. Hedging has a lot of implications for communication within and outside the legal context. Hedging contributes a lot to the mystification of the majority of the lay audience whose lives are affected by the law. This study therefore recommends that more studies of hedging in legal documents be conducted to be built upon the findings of the study of these two legal documents.

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