Clauses in E-Contracts: A Comparative and Contrastive Forensic Stylistics Analysis of the Terms and Conditions in Digital Applications

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Abstract

With the advancement in technology, numerous businesses have shifted to online mode for selling their services and products. All these businesses draft e-contracts in the name of "Terms and Conditions" in order to ensure a secure one-to-one relationship with their customers. These terms and conditions state the obligations and the rights of the owners which must be agreed upon by the end-user in order to get access to the website or application. All these clauses are stated within the domain of law which may or may not be in a language which is customer friendly. The aim of this research is to compare and contrast the legal language of the terms and conditions in two digital applications namely Amazon (International), Alibaba (International) and Daraz (National) and analyze the level of complexity, similarity, difference and ease in the chosen applications.

Keywords: Forensic Stylistics; Digital Applications; Clauses in E-Contract; Linguistics; Legalese.

1. Introduction

Technology has over time changed the way of doing business. Businesses, in today's world, are not just limited to their physical form. Through technology, running a business online has been made possible. Business owners now run their business both in physical and online mode which results in increased profitability and maximum growth. With so many advantages to an online business, there are also a number of problems that businesses have to face such as the issue of legality and credibility between sellers and buyers. To ensure a smooth running of an online business, business owners frame e-contracts in the name of "Terms and Conditions" that need to be agreed upon by the users before they can start using a particular application. These e-contracts define the rights and obligations of the owners and users within the domain of law; however, the difficulty and ease of the language in which these e-contracts are framed may vary.

Some of the terms and conditions are user friendly which means that they are deliberately written in a way that a layman can understand it, but there are also applications which use technical business and legal jargon which might not be easily understood by the users. This research intends to analyze the legal language used in e-contracts of three digital applications which include Amazon, Alibaba and Daraz. A mix of local and international e-commerce applications have been chosen so that an accurate comparison and contrast can be drawn between the legal languages used in these contracts.

1.1. Statement of the Problem

It is a common practice for people today to not read the terms and conditions of the applications and websites they subscribe to or sign up for. This was proven when an experiment was conducted in the University of Connecticut where the researchers made a fake application called "Namedrop" and asked students to sign up for it. It was found that 98% of them signed up without reading the terms and conditions. According to the research [1], there were two unusual requests buried in this agreement document: Is it okay if we give the NSA access to all of your data? Oh, and as a form of payment, we'll accept your firstborn child, alright?. One might wonder that there might be a reason due to which people avoid reading these terms and conditions. One of them is the drafting of these e-contracts in legalese which makes it time consuming and difficult for an average person to read. The current study aims to underscore if it is actually the case with e-contracts by analyzing the terms and conditions of three digital applications. It will be scrutinized by the researcher whether or not the legalese used in the clauses of these digital applications is comprehensible by an average person. This research intends to draw a comprehensive comparison and contrast between the legalese used in these digital applications.

1.2. Research Questions

1. To what extent does the language of the clauses in the digital applications namely, Amazon, Daraz and Alibaba is similar/different graphologically, lexically and syntactically?

1.3 Research Objectives

- To highlight the graphological, lexical and syntactical similarities/differences in the clauses of the digital applications namely Amazon, Daraz and Alibaba

1.4 Significance of the Study

Legalese should be written in a way that is comprehensible for an average human being for it is the right of an average person to know what a legal contract stipulates before signing up for it. With legal e-contracts being so lengthy and difficult to understand, users, most of the time, skip the terms and conditions without understanding the gravity of their action. This practice of signing up to e-contracts can often lead to agreeing to things which might be beyond the domain of ethics and law. There are a few researches which have been conducted to analyze the issues which are present in the clauses of the e-contracts, but from a forensic stylistics standpoint, this is the first research which intends to compare and contrast the language of the e-contracts in three different applications; therefore, highlighting the complexity, similarities, differences and ease present in the legalese that

is used to draft these contracts. Moreover, through this research, from an average man's point of view, I intend to suggest if the legalese of these contracts needs textual simplification or not.

1.5 Delimitations of the Study

This study is delimited to the analysis of graphological, lexical and syntactical analysis of the legalese in the contracts of three e-commerce websites namely, Daraz, Alibaba and Amazon. Moreover, the legalese related to two clauses in each of these applications will be analyzed. These two clauses are related to the creation of an account on these applications and indemnity clause. It has also been delimited to just pointing out the similarities and differences between the legalese used in the terms and conditions of these three applications.

2. Literature Review

This section quickly summarizes all the pertinent factors and prior works in this area in this part.

2.1 Forensic Linguistics

In simple terms, forensic linguistics is the scientific study of the legal language. According to the research [2], it is a subfield of linguistics known as forensic linguistics, also known as forensic stylistics, aims to employ that discipline's analytical methods to address a variety of legal and criminal issues, including trial, interrogation, rehabilitation, and retribution. In forensic linguistics many areas can be examined such as author identification, forensic stylistics, discourse analysis, linguistics dialectology, forensic phonology and transcription. The current study deals with the forensic stylistics of the legalese of the e-contracts.

2.2 Legalese and Contracts

Legalese is basically the language of the law. As stated by research [3], when discussing legal definitions, phrases, laws, and contracts, lawyers and other members of the legal profession frequently utilize a technical writing style known as "legalese". Legalese is known by many names such as legal jargon, legal speak, legal English and officialese. As reported by research[3], businesses employ this phrase in the expectation that it would increase the professionalism and legality of their procedures. There, however, is a downside for using too much legalese while drafting contracts of all sorts. According to research [3], people might not comprehend the points you're attempting to express if you use legalese; they can also end up erroneously interpreting the obligations and privileges granted to them by your policy, and before making a purchase from you, customers don't want to consult their lawyers to comprehend a policy that is posted on your website. The current study, therefore, aims at highlighting the terminologies employed in the digital contracts to see if they are easily understandable by an average person.

2.3 Previous Studies

Just as legalese is used to write the contracts of e-commerce, it is also used to write employment contracts. In 2017, a research on the content analysis of the employment contracts was conducted. It is a qualitative research

in which the researcher analyzes the morphosyntactic features of twenty employment contracts from private organizations. According to research [4], the usage of affixes, nominals, modals, binomial expressions, conditionals, and passives in employment contracts was discovered to be common ; additionally, these contracts contain implied, express, and legislative terms. Sosas also highlighted the impact of using such a language in employment contracts. According to research [4], these morphosyntactic elements add to the formality of contracts by making employment agreements abstract, nominal, and objective in nature. Moreover, she also found out the impact of using modal verbs and conditionals in the clauses. As reported by research [4], with the modal verbs and conditionals, which depict counterfactuals and are established by words like "if," "should," "unless," and "in the event that," which are typically included in a single sentence and may be combined with phrases inside the clause, the contracts sound authoritative in tone.

It is not just the use of nominals, affixes, modals, binomial expressions, conditionals and passives which is prevalent in legal writing; there are a lot of other syntactic features that are frequently used by law makers that make legal writing difficult to understand for an average man. One such feature is the use of "center-embedding" in legal writing. One such research was conducted by the researchers from MIT. According to research [5], the majority of these documents' largest issue, according to their research, is the manner lawyers cram lengthy definitions of legal terminology into the middle of sentences. This syntactic feature is known as center-embedding which makes sentences extremely lengthy and hard to follow for the readers. In this study, the researchers also suggest the ways in which legal language can be simplified. One such technique is to break down the legalese into shorter sentences; hence, avoiding center-embedding. In this research, which is published in the journal Cognition, they demonstrated how center-embedding can be avoided. The examples given by them are stated below which clearly shows how easy legal language can become if center-embedding is avoided.

2.3.1 Legal Language with Center-Embedding

"As stated by research [5], In the event that any payment or benefit by the Company (all such payments and benefits, including the payments and benefits under Section 3(a) hereof, being hereinafter referred to as the 'Total Payments'), would be subject to excise tax, then the cash severance payments shall be reduced."

2.3.2 Legal Language without Center-Embedding

"According to research [5]In the event that any payment or benefit by the Company would be subject to excise tax, then the cash severance payments shall be reduced. All payments and benefits by the Company shall hereinafter be referred to as the 'Total Payments.' This includes the payments and benefits under Section 3(a) hereof."

Apart from this, the MIT researchers also skimmed and scanned through the rental contracts to analyze the jargon which is being used in them. The use of legal jargon also comes in the way of comprehending a contract accurately for an average human being. According to the research [5], examples of documents that are difficult to understand include rental agreements that utilize terminology like "lessee" and "lessor." Moreover, as stated in research [5], the research group discovered that terminology like "tenant" and "landlord" is far more generic

and may be simply substituted by lawyers. Just like this study, my research also intends to scrutinize the syntactic structure of the chosen e-contracts in the digital applications. It also aims at drawing the differences and similarities in the syntactic structures of these e-contracts. From a layman's point of view, it will be assessed if these syntactic structures are complex or easy to understand. Simplification of legalese is not the demand of today. The criticism on the use of legal language began with the Plain English Movement in England and the United States in the 70s. According to research [6], in order to promote plain language or plain English, consumer groups used the media to expose and mock examples of ambiguity in legal papers and official documents. Many people in power were among the advocates of this movement. According to the research [6], Haigh even said that three objectives should be met by all legal writing: clarity, uniformity, and effectiveness and asserts that all legal documents should be as simple to interpret as feasible.

3. Research Methodology

This section explains the methodology adopted to analyze the language of the e-contracts.

3.1 Research Design

It is a purely qualitative research as the data is in the form of text. The researcher will analyze the lexical, graphological and syntactical choices of the writers of the terms and conditions of e-contracts. The chosen applications namely Daraz, Amazon and Alibaba, will first of all be downloaded. The researcher will then make an account on the given applications and then before using the given applications, the section under which the terms and conditions of each app is stated will be carefully read and examined.

3.2 Method of Data Collection

First of all, the applications of which the terms and conditions are to be analyzed will be downloaded. Then, the researcher will sign up for the applications by creating accounts on all three applications (Daraz, Amazon and Alibaba). Before using the applications, the researcher will have to agree to the terms and conditions of all these applications. From there, the chosen clauses will be read and analyzed. There is also a second way through which the researcher can collect the data for this research. The researcher will go on the websites of these applications and can read the user agreement without a sign up.

3.3 Sample

To analyze the similarities and differences between the legalese used in the user agreements of digital applications, three applications called Amazon, Alibaba and Daraz have been selected as a sample for this research. Purposive sampling technique has been used thereof. The rationale behind choosing these three applications is that the language of the three clauses that the researcher intends to analyze is present in all three of them which make it easier to compare and contrast. Moreover, these three e-commerce applications are among the most popular e-commerce sites with Alibaba having 903 million consumers, Amazon 310 million customers and Daraz 40 million active users right now

3.4 Theoretical Framework

For the analysis of the legalese of e-contracts Zhansheng Feng's 2012 model on stylistics has been chosen as a theoretical framework. According to Feng, legal English can be analyzed on three levels, graphological, lexical and syntactical. According to research [7], on a graphological level, legal English adopts characteristics such as the same capitalization, font style, font size, etc. in the same kind of legal papers; On a lexical level, it adopts characteristics such as archaisms, loan words from Latin and French, technical terms, and syntactically, it also adopts characteristics such as declarative, long and complex and complete sentences.

3.5 Method of Data Analysis

As far as the analysis of the data is concerned, I will first read the terms and conditions of three applications namely Amazon, Alibaba and Daraz. It can be done in two possible ways; I can either create an account on the downloaded applications or then read the user agreement or I can directly access the e-contracts from their websites. The two clauses will be read. These two clauses are related to the creation of the account and indemnity. These two clauses will be compared and contrasted keeping in mind the three levels of Feng's model. On the first level, the graphological features of these clauses will be compared and contrasted. On the second level, the lexical choices of the clauses will be compared and on the third level comparison and contrast will be done from a syntactic point of view.

3.6 Data Analysis

This section analyzes the data of the three digital applications namely Amazon, Alibaba and Daraz. The two clauses have been analyzed keeping in mind Feng's model. The clauses have been analyzed on three levels which are graphological, lexical and syntactical.

3.6.1 Graphological Analysis of the Clauses

The given table shows the words and phrases which are highlighted/italicized/quoted in the three clauses of these three applications.

Table 1

Member Accounts Clause		
Alibaba	**Amazon**	**Daraz**
● (a registered User is also referred to as a "**Member**" below) ● (the latter shall be chosen by a registered User during registration) ● (whether such use or activities are authorized or not) ● (including without limitation, posting any company or product information, clicking to accept any Additional Agreements or rules, subscribing to or making any payment for any services, sending emails using the email account or sending SMS) ● (collectively, "**multiple use**")	● Your Account ● Amazon.in/business.	● (whether such access or use are authorized by you or not). ● (but not obliged) ● (whether such use is authorized or not)

The data shows that Alibaba and Daraz employ brackets when they write their clauses as opposed to the use of italics or bold. These brackets contain the additional commentary related to this clause so that the reader can understand it easily. This commentary simplifies the legal language for the readers and it has been added deliberately. Here these brackets are merely used for the clarification of the clause by the writers of these contracts. Moreover, the clauses in Alibaba, also contain bold words like "Multiple Use" and "Members". Alibaba, by bolding these words, adopted the strategy, "if everything emphasized then nothing is emphasized." Only these two words have been emphasized. Apart from this, there are no other words in italics or in bold in Alibaba; and when it comes to Daraz, nothing is in bold or italics in this clause. Daraz, in this regard, has not put any emphasis through bold or italics in this clause, and no other strategy for emphasis has been used as well. When it comes to Amazon, no brackets have been used, only two words are written in blue which has its own significance. The writing in blue always indicates that the document itself is original. Moreover, according to the research [8], whatever is written in blue, it is easy to memorize and recall, and it is also known to be a "trustworthy color" as it resonates with people. Amazon is not only stating the clause, it is also making sure that you can memorize them and also trying to build a rapport with its members.

Table 2

Indemnity Clause		
Alibaba	**Amazon**	**Daraz**
● (including legal costs on a full indemnity basis)	N/A	N/A

According to the research [9], a comprehensive type of insurance compensation for losses or damages is

indemnity.

When it comes to Alibaba, it clearly clarifies to the users of their application that the members are obligated to release all the funds on full indemnity basis. It includes all costs such as including fees, charges, disbursements and expenses; however, no such clarification is given in the clauses of Amazon and Daraz.

3.6.2 Lexical Analysis of the Clauses

The given tables show the technical words which are used in the clauses of these three applications.

Table 3

Member Accounts Clause		
Alibaba	**Amazon**	**Daraz**
Registered (a)	Confidentiality (n)	Discretion (n)
Cancel or Terminate (v)	Restricting Access (n)	Invalidate (v)
Web Based Email (n)	Secure (a)	Liable (a)
Confidentiality (n)	Unauthorized (a)	Confidentiality (n)
Breach of Security (n)	Password (n)	Indemnify (v)
Unauthorized (a)	Register (v)	Unauthorized (a)
Subscribe (v)	Terminate (v)	Authorized (a)
Authorized (a)		Terminate (v)
Indemnify (v)		Disclosure (n)
Affiliates/directors/representatives (n)		Secure (a)
Liable (a)		Password (n)
Suspend or Terminate (v)		
Password/Credentials (n)		

The table given below shows the technical words/phrases used in the second clause of these applications.

Table 4

Indemnity Clause		
Alibaba	**Amazon**	**Daraz**
Indemnify (v)	Indemnify (v)	Indemnify (v)
Affiliates/Directors/Representatives (n)	Subsidiaries/Representative officers (n)	Release (v)
Hold them harmless (v)	Hold harmless Daraz (v)	Hold harmless Amazon (v)
Damages/losses (n)	Claim/Demand (n)	Breach (n)
Liable (a)	Attorney (n)	Third Party (n)
Submission (n)	Violation (n)	Waiver (n)
Breach (n)	Regulation (n)	Liability (n)
Fraudulent (a)	Third Party (n)	Cost (n)
Misleading (a)	Statute (n)	Damage (n)
Illicit or Offensive (n)	Waiver (n)	Statute (n)
Defamatory (a)	Contract (n)	Contract (n)

From the tables given above, it can be seen that in both the clauses of Alibaba, the frequency of the technical words which are nouns is 10, the frequency of adjectives is 8 and the frequency of technical verbs is 6.

Also, the table shows that the frequency of the technical words which are nouns in the clauses of Amazon is 12, the frequency of adjectives is 2 and the frequency of verbs is 4.

Lastly, the table shows that the frequency of the technical words which are in nouns in the clauses of Daraz is 12, the frequency of adjectives is 4 and the frequency of verbs is 6.

Table 5

Alibaba	Amazon	Daraz
Nouns: 10	Nouns: 12	Nouns: 12
Adjectives: 8	Adjectives: 2	Adjectives: 4
Verbs: 6	Verbs: 4	Verbs: 6

From this, it can be deduced that the most prevalent class of technical words which these digital contracts employ is nouns. To some extent, adjectives and verbs are also used.

The domination of nouns over verbs and adjectives is probably because of the word's imageability. For example, it is easy to have an image of the word contract which is a noun rather than an action such as indemnify. Besides, when accompanied with context cues, it is easy to understand the meaning of the noun.

3.6.3 Syntactical Analysis of the Clauses

This section deals with the syntactic analysis of the clauses in these three applications.

- **Alibaba - Sentence Length**

The sentences in Alibaba are relatively longer as Alibaba frequently implies the listing commas in their clauses. For example,

- Each Member agrees to indemnify **Alibaba.com, our affiliates, directors, employees, agents and representatives and to hold them harmless, from any and all damages, losses, claims and liabilities**
- which may arise from your submission, posting or display **of any User Content, from your access to or use of the Sites or Services, or from your breach of the Terms or any Additional Agreements.**

- User Content or other material **transmitted through the Sites or Services, including fraudulent, untrue, misleading, inaccurate, defamatory, offensive or illicit material** and that the risk of damage from such User Content

- Alibaba.com reserves **the right, at our own expense, to assume the exclusive defense and control of any matter otherwise** subject to indemnification by the Member

- **Amazon - Sentence Length**

The same enlisting commas also make the clauses of Amazon difficult to follow. For example,

- You shall indemnify and hold harmless Amazon Seller Services Private Limited, its **subsidiaries, affiliates and their respective officers, directors, agents and employees, from any claim or demand, or actions including reasonable attorney's fees,** made by any third party or penalty imposed due to or arising out of your breach of these Conditions of Use or any document incorporate**d by reference, or your violation of any law, rules, regulations or the rights of a third party.**

- You hereby expressly release Amazon Seller Services Private Limited and/or its affiliates and/or any of its officers and representatives from **any cost, damage, liability** or other consequence of any of the actions/inactions of the vendors and specifically waiver any claims or demands that you may have in this behalf unde**r any statute, contract or otherwise.**

- **Daraz - Sentence Length**

The sentences in Daraz face the same problem which is the usage of the enlisting comma that makes the clauses rather lengthy. For example,

- We may at any time in our sole and a**bsolute discretion, invalidate the username and/or password without giving any reason or prior notice and shall not be liable or responsible for any losses suffered by, caused by, arising out of, in** connection with or by reason of such request or invalidation.

- You should inform us immediately if you have any reason to believe that your password has become known to anyo**ne else, or if the password is being, or is likely to be, used in an unauthorized m**anner.

- You shall indemnify and hold harmless Daraz as owned by Daraz Singapore Private Limited, **its subsidiaries, affiliates and their respective officers, directors, agents and employees, from any claim or demand, or actions including reasonable attorney's fees,** made by any third party or penalty imposed due to or arising out of your breach of these Terms and Conditions or any document incorpo**rated by reference, or your violation of any law, rules, regulations or** the rights of a third party.

4. Conclusion

From the findings above, it can be concluded that Amazon and Daraz, graphologically employ the same strategy. They clarify the clauses for their readers in brackets. Amazon to some extent also emphasizes certain terminologies through bold. However, the strategy of Alibaba is entirely different as it uses Blue ink to highlight some important terminologies. Blue ink helps memorize the words and it also creates a rapport. Moreover, the lexical analysis shows that the most prevalent class of technical words in all these contracts is nouns. Verbs and adjectives to some extent are also used. Lastly, from a syntactic point of view, all these three applications use enlisting commas which make their clauses hard to follow and read. From a layman's perspective, it can be suggested that these applications should keep the syntactic structures simpler. Instead of embedding so many phrases in one sentence, they should be broken down into separate sentences for a better understanding of the reader.

Acknowledgements

References

[1] M. Dahl, "A (Fake) Terms-of-Service Contract Asked People to Give Up Their Firstborn," The Cut, Aug. 23, 2016. https://www.thecut.com/2016/08/terms-of-service-asked-people-to-give-up-their-firstborn.html (accessed May 11, 2023).

[2] S. Ashraf, "What Is Forensic Linguistics? (with pictures)," Language Humanities, Apr. 15, 2023.

https://www.languagehumanities.org/what-is-forensic-linguistics.htm

[3] M. Komnenic , "Legalese: Definition & Meaning," Termly, Apr. 22, 2022.

https://termly.io/resources/articles/legalese/ (accessed May 11, 2023)

[4] R. Sosas, "The Language of Agreement: A Content Analysis of Employment Contracts," Journal Of

Humanities And Social Science, vol. 22, no. 12, pp. 58–86, Dec. 2017, doi:

https://doi.org/10.9790/0837-2212025886.

[5] C. Melore, "Here's why legal documents are so hard to read -- and how to easily fix it," Study Finds, Mar. 08, 2022. https://studyfinds.org/legal-documents-so-hard-to-read/

[6] M. Shiflett, "Plain English Movement and Its Influence on Today's Legal English," International Journal of Novel Research in Interdisciplinary Studies, vol. 4, no. 2, pp. 11–14, 2017.

[7] Z. Feng, "On the Stylistic Features of Legal English," World Journal of English Language, vol. 2, no. 2, Jun. 2012, doi: https://doi.org/10.5430/wjel.v2n2p29.

[8] K. Phan, "Do blue notes actually improve your memory performance? – Baron News," Baronnnews.com, Mar. 26, 2019. https://www.baronnews.com/2019/03/26/do-blue-notes-actually-improve-your-memory-performance/

[9] A. Hayes, "Indemnity: What it means in insurance and the law," Investopedia,

https://www.investopedia.com/terms/i/indemnity.asp (accessed May 11, 2023).