

A Comparative Analysis of Lexical Features of Contract English

Zhang, Guangqi

School of Foreign Studies
Beijing Information Science and Technology University
Beijing, China
zgq1605@126.com

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 literature English or Basic English. This paper, based on the analysis of typical examples, and the comparison with the language in literature English and Basic English, discusses the lexical features of contract English from the perspectives of archaisms, repetition of words, loan words, strings of synonymous words, technical terms, formal and dignified words, deliberate use of vague words, avoidance of pronouns, and common words with uncommon meanings. Accordingly, a conclusion can be drawn that it is necessary to make use of plain English in contract, and the lexicon of contract English should be learned and improved.*

Keywords: *Contract, literature English, Basic English, Contract English, Lexical features.*

1. INTRODUCTION

With the deepening of reform and opening-up and its accession to the World Trade Organization, China is playing an increasingly active role in the world economic activities and enhancing its economic and commercial exchanges and cooperation with an increasing number of countries, and 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.

A contract refers to an agreement establishing, modifying and terminating the civil rights and obligations between subjects of equal footing (Xie, 2006:18). 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 literature English or Basic English. 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/her to read the English contract. It is highly possible that he/she could study and understand English contracts

better than those who know little about it.

2. THE LEXICAL FEATURES OF LITERATURE ENGLISH

In Advanced Learner's English-Chinese Dictionary (2004 : 1022), "literature" means pieces of writing that are valued as works of art, especially novels, plays and poems (in contrast to technical books and newspapers, magazines, etc.) And as a type of English language, it has its own lexical features. Take a poem for example:

Flying at Night

Above us, starsellations. Beneath us, constellations.

Five billion miles away, a galaxy dies

like a snowflake falling on water. Below us,

some farmer, feeling the chill of that distant death,

snaps on his yard light, drawing his sheds and barn

back into the little system of his care.

All night, the cities, like shimmering novas,

tug with bright streets at lonely lights like his.

It is a poem describing the feeling of flying at night. It can be easily found that the word the poet applied is plain and simple, only those who can not read can not understand this poem. No formal words, no technical terms, and no deliberate use of vague words appear in most poems. The following is an excerpt from *The Season of Divorce*:

My wife has brown hair, dark eyes, and a gentle disposition. Because of her gentle disposition, I sometimes think that she spoils the children. She can't refuse them anything. They always get around her. Ethel and I have been married for ten years. We both come from Morristown, New Jersey, and I can't even remember when I first met her. Our marriage has always seemed happy and resourceful to me. We live in a walk-up in the East Fifties. Our son, Carl, who is six, goes to a good private school, and our daughter, who is four, won't go to school until next year. We often find fault with the way we were educated, but we seem to be struggling to raise our children along the same lines, and when the time comes, I suppose they'll go to the same school and colleges that we went to.

It can be easily noticed that the words the writer used were plain, and informal. It described a part of the narrator's life after marriage. There are no archaic words because the author must consider the readers' education level, for they don't want to learn something serious, but to seek for pleasure. In novels, many common words with uncommon meanings are used. They are used not because they are traditional and conventional like the law terms, but because readers know them from the background the novel happened in. For instance, "firm" may mean "obstinate" and "air support" may mean "bomb". In the above excerpt, *resourceful* does not mean *full of resources* or *tactful and smart*, but means *full of troubles*. And the reduplication of words is often presented in plays for the need of stressing some view or making the play look like a real story.

3. THE LEXICAL FEATURES OF BASIC ENGLISH

In Advanced Learner's English-Chinese Dictionary (2004 : 122), "basic" means forming the part

of something that is most necessary and from which other things develop, and of the simplest kind or at the simplest level. Therefore, the lexicon of Basic English is simple, easy and each person from English-speaking countries knows the meaning of them. People use them at their pleasure because everyone knows them and there is no worrying about misinterpretation. The following is a typical example:

After dinner we sat around and chatted and it somehow came into the conversation that I had never dated a boy that was Chinese, or Asian for that matter. One of my roommate's male friends, a large ABC whose parents are Taiwan, put his arms in the air and said, "So, what's your problem?" I replied, "Excuse me?" He repeated himself, "So, what's your problem? Why don't you date Asian guys? Do you wanna be White or something?" I was horrified. I explained to this boy that I wasn't that "I wanted to be White" or that I had something against Asian men. I explained to him that it was because the area that I grew up in was predominantly White, and I wasn't going to seek out the three or four Asian guys I knew in school to go out with just because they were Asian. Plus, I told him, Chinese guys usually don't like me—I am too direct and straightforward. He told me that was "no excuse" as he knew many guys in California, where he is from, that would date me.

When reading the above example, you feel quite relaxed as if an old friend was talking to you and telling you why she didn't want to date Asian guys. There is no archaic words or technical terms, and the words in it are very informal and casual, it uses "wanna" instead of "want to" because "wanna" sounds intimate and we can guess out the age the girl who wrote the above article. The pronouns such as *we*, *it*, *he*, and *him* are used naturally as well, for few people can misunderstand the meaning the pronoun replaces, because the words around them are simple, easy and popular. If, unfortunately, someone misunderstands the pronouns, it will turn out to be a trifle not to be cared. People do not take any legal duty for misunderstanding a pronoun in Basic English.

4. THE LEXICAL FEATURES OF CONTRACT ENGLISH

4.1. Frequent Employment of Archaic Words

Language changes continually, but the language of the law is conservative, tending to resist change and changing (Hiltunen, 1990: 17). As Crystal, D. & Davy, D. (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, and unlike literature English where archaic words are seldom used, contract English is well studded with so many archaic words such as *hereby*, *hereof*, *hereto*, *hereunder*, *hereinafter*, *hereafter*, *thereby*, *there from*, *there under*, *thereof*, *therefore*, *whereby* and *whereof*.

It can be easily detected that these archaic words are mainly formed by *here* or *there* or *where* plus a preposition and that most of them are regarded as adverbs, generally acting as attributive modifiers or adverbial modifiers in sentences. The meanings of these archaic words might as well be illustrated as follows:

The Employer *hereby* covenants to pay the Contractor in consideration of the execution and

completion of the Works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the time and in the manner prescribed by the Contract.

“Temporary Works” means all temporary works of every kind (other than the Contractor’s Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.

An irrevocable credit shall be deemed to constitute a definite under taking of the issuing bank. Provided that if the stipulated documents are presented and are complied with the terms, conditions and provisions of the credit, and if the credit provides for sight payment, the payment shall be made or shall be guaranteed to be made.

All disputes arising from the performance of this Contract shall, through amicable negotiations, be settled by the Parties hereto. Should, through negotiation, no settlement be reached, the case in question shall then be submitted for arbitration to the China International Economic and Trade Arbitration Commission, Beijing and the arbitration rules of this commission shall be applied. The award of the arbitration shall be final and binding upon the Parties hereto. The Arbitration fee shall be borne by the losing party unless otherwise awarded by the Arbitration Commission.

Unfair competition mentioned in this law refers to such acts of business operators as contravene the provisions hereof, with a result of damaging the lawful rights and interests of other business operators, and disturbing the socio-economic order. Business operators mentioned herein refer to such legal persons, other economic organizations and individuals as engage in the trading of goods or profit-making services (hereinafter called Goods including services).

Whereas Party B has the right and agrees to grant Party A the right to use, manufacture and sell the Contract Products of Patented Technology; Whereas Party A desires to use the Patented Technology of Party B to manufacture and sell the Contract Products; The Representatives authorized by the Parties to this Contract have, through friendly negotiation, agreed to enter into this Contract under the terms, conditions and provisions specified as follows:

hereby means by this means or by reason of this;

hereof means of this;

hereto means to this contract;

herein means in this;

hereunder means under this;

hereinafter means later in this contract;

therefrom means from that;

thereof means of that;

thereunder means under that.

It is these archaic words that not only render contracts highly formal and dignified but also condense the contractual language so that contracts are endowed with a strong formal flavor and shielded from language repetition and ambiguity.

4.2. Lexical Repetition

Like the plays, the lexical repetition is often used, not for stressing something, but to achieve exactness of reference and leave no loopholes whatsoever, contracts tend to use lexical repetition as the formal device in place of pronoun reference.

Repetition of the same word or words not only occurs between sentences but between different parts within the same sentence. For instance:

The Author shall bear the cost of any necessary fees for textual and illustrative permissions but the Publishers agree to pay such fees on *the Author's* behalf up to an agreed maximum amount and may deduct the same from any sums that may become due to *the Author* under this Agreement.

We can see that the noun phrase *the Author*, instead of the pronoun *him* or *he*, is repeated three times even in the same sentence in order to avoid any ambiguity in reference. Take another sentence for example:

Having examined *the conditions of contract, specification, drawings and bill of quantities* for the execution of the abovementioned works, we the undersigned, offer to execute and complete such works in conformity with *the conditions of contract, specification, drawings and bill of quantities*.

As a result, pronoun reference is scarce and is used only when there is no possibility of confusion. Actually, in contracts, almost no pronoun is used unless it is unmistakably clear. Occasionally, *the same* is used to refer to word(s) mentioned above when there is no possible misinterpretation:

Within sixty days after Party A has received the documents from Party B, if Party A does not declare in writing any shortage and request to cover *the same*, it is considered as accepted.

Here *the same* is used in place of any shortage.

4.3. Loan words

Different from many other varieties of English, Lots of French and Latin words manifest themselves in contracts, which is characteristic of contract English. Owing to the extensive borrowing of French legal terminology after the Norman Conquest, French element is extremely large in English and there are many words of French origin like *verdict, warrant, statute*, etc. On the other hand, since 597 AD, when Christianity was introduced into England, Latin legal terms have gradually permeated into English and words such as *basis, declaration, register* and *prior* are of Latin origin. Words of Greek, French and Latin origins are mostly formal or learned words. (Li, 2006 : 30) Consequently, these French and Latin words help raise the formality and solemnity of contracts.

What is particularly distinctive in contract English is the use of French and Latin legal terms, which have kept their original forms, such as *force majeure, bona fide holder, pro rata tax rate, de facto agreement*, etc.

4.4. Strings of Synonymous Words

Strings of synonymous words connected by the conjunction *or* or *and* are one of the remarkable features of contract English, which is the result of painstaking pursuit of preciseness and exactness of contractual language. (Nida, 2004) Such use of synonymous words is meant to cover

the intended content more comprehensively and flexibly and to rely on inclusiveness as compensation for lack of precision. Those that can be most frequently seen are: *alteration, modification or substitution; loss, injury or damage; use, misuse or abuse; terms and conditions; able and willing; stipulations and provisions; in contract or in tort; fraud and deceit; free and clear; by and between; final and binding, etc.* In the following sentences more examples can be found:

The headings and marginal notes in these terms and conditions shall not be deemed part hereof or taken into consideration in the *interpretation or construction* thereof or of the Contract.

Party A shall no longer be responsible for keeping *secret and confidential* the part already published. In consideration of mutual *covenants and agreements* contained herein, the parties hereto agree as follows:

If the Contractor shall duly perform and observe all the *terms, provisions, conditions and stipulations* of the said Contract, this obligation shall be *null and void*, but otherwise shall remain *in full force and effect*.

Some synonyms in pairs are fixed and conventional, such as *in full force and effect, final and binding* and *terms and conditions*, while others are made for exact and indisputable wording.

In contrast, Strings of synonymous words are hardly used in basic English, for at most of the time, it will choose only one word to express the meaning—the simplest one, even if it has a lot of other words can be used. In literary works, Strings of synonymous words are used sometimes for the avoidance of repetition and to show the beauty and the art of words.

4.5. Technical Terms

In literature English and Basic English, technical terms are seldom appears. In contract, technical terms are widely used in contract English.

As Garner (1991) has pointed out that a specialized and technical vocabulary is the first and most obvious way to regulate a domain of social experience or activity, the employment of technical terms is another marked feature of contracts. Generally, the technical terms in international business contracts can be divided into three categories: legal terms, business terms and common words for special purpose.

First, according to Lu (2007), contracts fall into the variety of legal documents, which covers a wide range: statutes, decrees, legal provisions, economic contracts, commodity warranty, deeds of trust, insurance policies, wills and testaments, leases and installment plans, etc. Therefore, it is certain that, in contracts, there are some technical words used only in legal documents like *substantive law, infringement, in the presence of, quantum meruit, covenants*, etc. Such legal terms are unique to this variety and raise the authority of contracts.

Second, as contracts are related to various sectors of business, lots of business terms can be easily found in contracts, such as *equity joint venture, articles of association, letter of intent, sublicense, know-how, and negotiable instruments*. Pertinent business terms concisely and accurately communicate the intended content.

At last, a number of common words have been converted into technical words with only one of their meanings kept in contracts such as *action, negligence, limitation, counterpart, prejudice, execution and party*. Common words used in such a special way help mark out a text belonging to

the field of legal documents.

In a word, technical terms, which are generally more concise and comprehensive and so are indispensable in succinct and direct communication, not only guard against any disputable understanding but also present a degree of formality (Shippey, 2003).

4.6. Formality and Dignity

As is obvious, contracts are concerned with imposing of obligations and conferring of rights; moreover, once executed under law, contracts become a kind of legal documents binding upon the parties concerned and a legal evidence for settlement of disputes. So in terms of lexicon, contract English is very formal, even dignified.

In literature English, the words the author used can be formal, when it was retelling a conversation between two judges in court; and can be casual, when it was describing a small river near a small village. In Basic English, the words are as casual as possible. In contrast, the words must be formal or even dignified in contract English.

The formality and dignity of contract English are best shown in the frequent use of archaic words, loan words and technical terms at the level of lexis.

4.7. Deliberate Use of Vague Words

Undoubtedly, vague words have no place in Basic English for it causes misunderstanding and misinterpretation, not the style of the core characteristic of Basic English—simple, easy and popular. In literature English, vague words may appear in novels, plays and poems and other kind of literary works for the need of plots, backgrounds, or alliteration etc, and they are not deliberately used. In contrast, vague words are usually deliberately used in an English contract.

The language of the law is sometimes characterized as one of “extraordinary precision”, and “unambiguous” (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.

4.8. Avoidance of Pronouns

In Literature English, pronoun is no project. It is used whenever and wherever necessary and without any limits or rules. When and where it would come up depends on when and where the author needs it. In Basic English, pronouns present themselves quite often, as it is simple, easy and popular. In Contract English, at most of the time, the use of pronouns is avoided.

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”. 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.

4.9. 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:

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.

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. As is easily found that in contracts, most of the common words with uncommon words are law terms. In contracts, the use of law term is inescapable, so in order to save a long sentence or even a paragraph of explaining the legal duty and obligations of equal parties, people use law terms, which also called common words with uncommon meanings. In Basic English, all the words used are common words and without uncommon meanings. And in literary works, common words with uncommon meanings often used in novels, such as *hand* means *help*, *the fifth column* means *spy*, *a Judas kiss* means *betrayal*, and *cold blood* means *indifferent* etc.

5. CONCLUSION

The language of legal texts is generally complicated and technical, and, therefore, difficult for the layman to understand (Feng, 2004). Contract English is a variety of language of legal texts and contracts have no exception. For many years many experts in language are trying very hard to study a large number of legal texts in order to make legal language easier to read and understand. 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 grateful and attracting attention all over 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, loan words, strings of synonymous words, deliberate use of vague words, avoidance of pronouns, repeated words, formal and dignified words, common words with uncommon meanings, and technical terms etc. As the learner of contract English, our attitude towards the lexicon of contract English should be “to learn and to improve”. “To learn” is to learn the traditional expressions of contract English; “to improve” is to try our best to better the traditional expressions of contract English.

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AUTHOR'S BIOGRAPHY

Zhang, Guangqi received MBA from Nuernberg University of Applied Sciences, Germany and is currently doing teaching and research in School of Foreign Studies, Beijing Information Science and Technology University. His research interests include Linguistics, Business English.