



International Journal of Research in English

ISSN Print: 2664-8717
ISSN Online: 2664-8725
Impact Factor: RJIF 8.00
IJRE 2023; 5(1): 188-191
www.englishjournal.net
Received: 01-03-2023
Accepted: 07-04-2023

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Communication barriers in legal English: A brief analysis

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DOI: <https://doi.org/10.33545/26648717.2023.v5.i1c.103>

Abstract

Communication that works is never ambiguous. When the communication is clear and concise, the listener or reader can comprehend the speaker's or writer's intentions. Poor word choice might lead to misunderstandings at work. To be sure that your choice of legal terminology is accurate, you must work twice as hard as a native English speaker. Otherwise, you run the danger of appearing ignorant by using a legal term or concept improperly. The goal of the current paper is to demonstrate how legal English differs from common English, where there is a persistent communication gap for a variety of reasons. It presents a communication paradigm, some potential barriers to communicating in legal English, and suggestions for how to get over them.

Keywords: Communication, legal english, legalese, barriers

Introduction

The transmission and receiving of messages are part of the communication process. Communication is regarded incomplete, if the message is not successfully delivered to the intended receiver. The absence of impediments or hindrances in the communication route and medium is required for proper message receipt. Language acts as a vehicle of communication, with the primary goal of conveying messages from one person to another. However, there is one arena in which language fails to perform its essential communication function: the sphere of law. The English language employed in this sector is usually referred to as legal English or legalese.

The purpose of this article is to give reasons demonstrating how legal English fails to properly serve the essential role of a language, namely communication, by violating some generic communication norms. Despite the efforts of senders or legal experts to deliver their messages clearly, recipients sometimes do not completely appreciate or get the intended meaning. According to Crystal and Davy (1969) ^[4], legal English is the "least communicative" of the several types of language.

Shannon and Weaver (1949) ^[1,3] established a basic model of communication that defines the major components: the source (equivalent to the speaker), the transmitter, the signal, the receiver, and the destination (corresponding to the listener). We may interpret the source as the speaker, the signal as the speech, and the destination as the listener by translating these parts into their appropriate roles in a specific communication process. This paradigm serves as a foundation for comprehending communication.

If any problems or interruptions occur in the source or communication channel, the communication process will be paused or terminated, according to this paradigm.

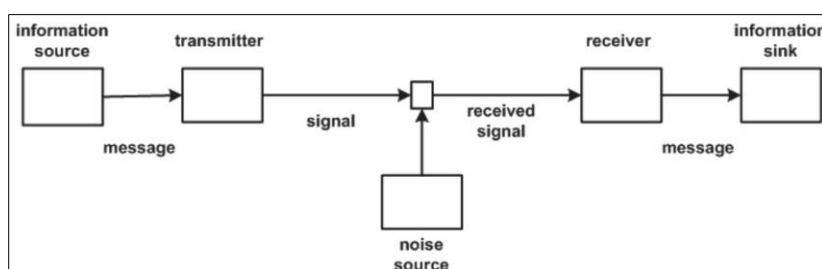


Fig 1: Shannon and Weaver's fundamental model of communication

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Communication has a larger role in the context of legal English than just delivering facts. It plays an important function in shaping society and affecting people's lives, whether or not they completely grasp the message. Kocbek (2008) ^[10] emphasises this point, saying: Legal language, unlike ordinary language, goes beyond the simple transmission of knowledge and information. It directs, influences, and modifies people's behaviour via a variety of ways like as legislation, court rulings, and contracts. It therefore helps to the creation and manifestation of standards within various communities. Furthermore, legal language has an explicit performative element, as seen by its use in delivering judgements, establishing responsibilities, providing rights, giving permission, expressing restrictions, and other practical impacts.

Legal language, due to its performative character, utilises certain structures that permit the performance of specified speech actions. Establishing duties, bestowing rights, providing permission, expressing restriction, and other comparable roles are examples of these actions.

When we view legal English through the lens of the previously mentioned communication model, we see that both the source (law specialists) and the code (the language used in legal papers) often confuse the message to the point that it is difficult for receivers to completely grasp it. These two variables are mostly responsible for communication difficulty. Legal English, in contrast to other disciplines where nonverbal communication may assist lessen concerns, prefers to eschew nonverbal clues in order to minimise any possible misunderstanding.

This raises basic problems, such as whether legal English purposely violates universal communication standards. Does it have its own independent communication system? It is critical to get insight into these difficulties and study their nature in order to grasp the communication issues prevalent in legal English.

Legal English and Legalese

Legal English is a formal variety of academic English that includes legal terminology. It is most often used in legal literature, textbooks, and other types of communication such as office memos, court judgements, and client letters. These writings are written in formal but normal English, with little legalese. The word "legalese" is often used, sometimes disparagingly, to denote the distinctive features of legal English. Legalese is regularly chastised for its excessive intricacy, density, repetition, and antiquity. Acts, Judgements, Briefs, Pleadings, and Wills are examples of legal documents that include a high level of legalese.

Legal English is distinguished by the employment of highly specialised terminology and colloquial words in certain contexts. It is also distinguished by a profusion of long noun phrases, a significant dependence on passive voice, the usage of several negatives, nominalization, and sophisticated grammatical structures. These structures have several embedded clauses and subordinate clauses that are often positioned in unexpected positions. Furthermore, legal English uses lengthy, complicated phrases with elaborate coordination and subordination patterns.

Fundamentals of communication

Certain metrics and communication concepts come into play when assessing communication effectiveness. As important

concepts, the 7 C's of Effective Communication are often emphasised. These are some examples:

Completeness: Ensuring that the message is complete and contains all relevant information.

Conciseness: The ability to provide a message in a clear and brief way while avoiding needless verbosity.

Consideration: Considering the audience's requirements, opinions, and emotions throughout the communication process.

Concreteness: The use of particular and concrete language to express a message, which makes it more intelligible and relevant.

Clarity: Making sure the message is clear and understandable to the target audience.

Courtesy is the act of demonstrating civility, respect, and thoughtfulness throughout the communication process.

Correctness: Maintaining correctness and precision in the message's content, language, and general presentation.

In addition to these principles, researchers such as Neal (2014) ^[11], Goldsmith (2013) ^[8], and Pal (2004) ^[12] have stated that brevity, clarity, preciseness, completeness, and the avoidance of duplication are essential factors in successful communication.

Communication as a two-way process

Communication is often thought of as a two-way street with a sender and a receiver. However, in the case of legal English, the presence of a law expert between the sender and the recipient makes it a three-way procedure. Understanding legal papers may be difficult for a layman or non-expert since law specialists often use a conventional style of writing that can be difficult to understand without their guidance. Tiersma (2006) ^[16] claims that attorneys prefer to stick to known forms and arrangements because they feel more at ease. Because of this predilection, attorneys may push their clients to depend only on their services for legal concerns.

Redundancy

In communication, repetition may contribute to boredom and frustration. While some repetition is employed to emphasise information, writing rules state that material should not be repeated unless it was originally delivered in a complicated manner.

According to Bowers (as stated in Lehto, 2012) ^[17], legal language is traditional and repetitious. It often makes use of predictable syntactic structures and lexis, which facilitates understanding. The legal diction inventory includes terms from French, Latin, and English, with numerous words combining these languages. This language fusion has produced terms like "null" and "void," where "null" is derived from the Latin word "nullus" and "void" is derived from the ancient French word "voide." It is possible to see the effect of French and Latin formulations on English sentence structure. Chancery English, which first appeared in administrative writing in the 15th century, played an important part in this evolution.

The example offered demonstrates word redundancy. For example, the phrase "Nothing in this Act shall affect" is

followed by a lengthy list of phrases that are repeated over and over again, such as "order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument, or thing." Repetition might be eliminated by using succinct and clear wording.

"This Act shall have no effect on any previous order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument, or thing made under prior companies law," for example. Such orders, rules, regulations, appointments, conveyances, mortgages, deeds, documents, agreements, fees, resolutions, directions, proceedings, instruments, or things shall continue to be in force and have the same effect as if made under or in accordance with this Act."

Brevity

Brevity is generally acknowledged as an important ability in successful communication, requiring the use of succinct language to explain ideas in both written and spoken forms. Language experts often urge students to aim for brevity in their writing. However, legal English is notorious for its extremely lengthy phrases. Traditionalists contend that sentence length in legal English is required to maintain clarity and accuracy in legal writings. Simple and brief statements that fail to provide all of the relevant legal rules are often not preferred in the realm of law. According to Butt (2006) [3], phrase length in legal English is related with the purpose of being all-inclusive. He says that in order to provide definitions for every potential case, many drafters wind up writing definitions that are too long and comprehensive. However, excessive length and complexity may be harmful, as drafters may accidentally omit essential topics that should have been covered in their quest of inclusivity.

Clarity of expression

To express messages effectively, the idea of effective communication argues for the use of basic language and short phrases. However, in legal English, there is a trade-off between clarity and understanding, which is generally done by using long phrases. Even when facts are presented clearly, using suitable terminology and grammatically sound phrases, readers may fail to completely comprehend the topic. It is not enough to achieve grammatical clarity; comprehension is also necessary. A text is considered clear when it is readily understood by the reader.

Sentences in legal English are often extended because it is thought to improve the clarity and accuracy of the writings. Simple and brief phrases are not preferred in the legal profession if they do not include all of the relevant legal requirements. Law specialists often value accuracy above language simplicity and are hesitant to sacrifice complexity for linguistic clarity. According to Assy (2011) [18], clarity for attorneys extends beyond language clarity. In truth, language clarity, or simplicity, is a secondary and auxiliary feature to legal clarity, which takes primacy. Furthermore, language clarity is only useful to attorneys inasmuch as it helps to legal clarity.

Use of personal language

Legal documents are known for being impartial, with facts presented in a generalised and impersonal way. Legal language incorporates a variety of linguistic strategies to

attain maximum impartiality and impersonality. The most typical of these strategies are passive constructions, nominalizations, and specialised personal pronoun choices. The use of third person pronouns or nominal phrases instead of first and second person expressions (such as "I" and "you") is prominent in legal English. This behaviour derives from the fact that legislation and legal texts target the broad public rather than individuals. Even judges use the term "the court" rather than personal pronouns like "I." Because it fits with the Principle of conclusion Weight, which entails putting big, complicated noun phrases towards the conclusion of sentences, this linguistic preference naturally leads to a greater usage of passive voice.

Nominalization is an important aspect of formal writing, especially in legal English, which is recognised for its "ultra formal" style (Russel, 2001) [19]. To simplify language and establish an impersonal tone, nominalizations are used. While nominalization is suggested in academic English to create formality, legal English is notable for its widespread usage of nominalizations. Verbs are used less often in legal English, and the verbs that are employed are typically utilised in less limited verbal structures (Williams, 2005) [15]. Legal papers tend to favour nouns over verbs, therefore the writing style is more "nouny" than "verby." Nominalization is employed in legal English to preserve an objective writing style and is often used in conjunction with the passive voice to "depersonalise" the language (Tiersma, 1999: 77) [14]. The usage of nominalization and passive construction is shown in the following example:

"The cancellation of shares in accordance with this section shall not be considered a reduction in share capital as defined by this Act."

Conclusion

Reformists are increasingly calling for legal English to be simplified in order to make it more accessible to the general public. The simple English Movement has aggressively promoted for the use of simple language in legal writing, with the goal of breaking the perceived dominance of legal experts and creating a more user-friendly legal system. Purists and traditionalists, on the other hand, are opposed to any type of linguistic fusion in the realm of law. If the objective is to ensure that legal communications reach a larger audience, some changes to legal English must be made in line with communication standards.

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