A DISCOURSE ANALYSIS OF LAND AGREEMENT

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An analytical discourse approach to the study of legal document brings within discourse circuit, the age-long statement that "action speaks louder than voice". Legal document has both linguistic and non-linguistic modes of communication ranging from textual uniqueness of the syntactic structures and semiotic features which charaterize printed legal document's content to the meaning – complementary, contextually – dependent pieces of information that make up a discourse meaning. Meaning at discourse level is once again portrayed as an essential product of text-context interaction. This paper therefore offers discourse analysis – a purely language – oriented approach – as a common and an alternative way of decoding meaning from a legal document so that the communicative essence of a legal discourse will not be an exclusive privilege of only 'the learned friends' but also of the literate non-professionals.'

Introduction

The main focus of the pioneer linguists had been to develop rules guiding the "grammaticalness" and "correctness" of sentences. In recent years, however, the interest of linguists is now more on the communicativeness or the functional value of a text. In achieving this goal, linguists have established a complex interplay among forms, information packaging and meaning.

Communication is said to take place if the right quantum of information is exchanged between the participants and an utterance is considered informative if it is meaningful. Language as a means is imbued with full meaning-conveying potentials the goal of which is only achievable with the aid of non-verbal cues. Non-verbal means of communication functions mostly as meaning-complementary. Communication becomes better, therefore, with the interaction of both linguistic and non-verbal means because a good discourse is strongly predicated upon how linguistic and non-linguistic forms are organized to influence the functions of such text. This paper therefore intends to critically examine with the aid of discourse facilities how the pattern of forms affects the functions, and how both mark the communicative system of the land agreement as a subject matter of the field of legal discourse using discourse analysis as a proof to demystify the conception that legal documents are generally and exclusively interpretable and comprehensible by the professionals. Through the data, the researcher examines not only how the general features of legal language, as manifest in land agreement samples, create structural complexity but also deploys relevant discoursal resources to simplify the complexity, and then expounds how communication is facilitated in land documents.

The Concept of Legal Discourse

According to Jegede (1998) the introduction of the legal profession was dated back to the second half of the 19th century to champion "the rule of law and the attainment of justice" (p.143). He established that the archaism and conservatism in the use of language in law were "largely and firmly rooted in the English tradition" (p.141).

The Council of Legal Education of the Nigerian Law School observes that the use of foreign words, intricate expressions, archaic words and expression, verbosity and excessive deployment of conjunctions are old traditions inherited from the British through which the profession was introduced to Nigeria. It was argued that the choice of and insistence on this old form which is consequently hindering effective communication (except among the professionals) was initially adopted because the draftman charged money based on the number of words in a document. Examples of legal documents are those drafted on deeds, contracts, leases, wills and trusts.

Legal documents a defined by *Osborn's Concise Law Dictionary* (1993) are written statements that supply certain information capable of being evidence for or against the concerned person(s). Documents are drafted by a draftsman or draftsmen. Adubi (1999) explains the salient characteristics, among others, of a legal document:

(i) It should be paragraphically arranged and numbered.
(ii) The paragraphs should be short and preferably consist active simple sentences.

A Legal Document contains a legal agreement. The Dictionary (1993), defines agreement as:

> *The concurrence of two or more persons in affecting or altering their rights and duties... such declaration may take place by a concurrence of the parties in a spoken or written form of words as expressing their common intention (p.21).*

Each of the three parties mentioned below is capable of constituting transacting parties in land agreement.

(i) Transferor – Transferee as in Deed of Transfer
(ii) Vendor – Vendee (purchaser) as in Deed of Conveyance
(iii) Assignee – Assignor (purchaser) as in Deed of Assignment

Each of the parties enjoins different statutory interpretation in law. A land agreement contains terms of agreement guiding the sale/transfer and purchase of a parcel of land that are dully endorsed by the two parties as a sign of mutual understanding. Land is one of those items on which a legal agreement can be based. According to Olawoye (1975):

> *Land includes the surface of the earth; the subsoil and the air space above it, as well as all things that are permanently attached to the soil. It also includes streams and ponds (p.9).*

Chimombo and Roseberry (1998) remark that legal language has been an area of interest to both linguists and legal practitioners as well. As a result of the great focus given to the syntax and morphology in written documents, the two authors maintain that "words are of central importance for the lawyer because, they are, in a very particular way, the tools of his trade" (p. 264). How this type of legal discourse is organized to facilitate communication between the two parties as evident in this endorsement of the document is the main concern of this paper and we intend to use discourse analysis as a theoretical model.

Discourse Analysis: A Review

The interest of discourse analysis lies in studying and explicating how information is packaged and rendered in a meaningful manner. Wales (1989) asserts that discourse also offers a platform on which varying ideologies and societal institutional values are discussed.

Since language is "the most frequently used and most highly developed of human communication" (Crystal, 985:262), linguists have taken different aspects of language in order to fully understand what language is, how it works and for what it is being used. However, discourse analysis is the most eclectic in approach because it operates at the intersection of disciplines. In other words; discourse interpenetrates with other disciplines like pragmatics, semantics, syntax, sociolinguistics or/and psycholinguistics (Brown & Yule 1983:ix) to sharpen its analytical approach to the study of the text. Foucault (1972:82) frowns at this "rather fluctuating meanings of the word discourse" which sometimes frustrates researchers who are new in the field.

Linguists differ in choosing appropriate words in their bid to carve out the concept of discourse analysis. For instance; discourse analysts like Brown and Yule (1983) and Candlin (1997) propose that it is *language in use* while Fasold (1990) and Fairclough (1992) define it as *language use*. There are also analysts like Cook (1992), Lee (1992) and Jaworski and Coupland (1999) who align themselves with a multi-methodological approach to the study of discourse. The latest view portrays discourse as an intellectual attempt at collating several aspects of disciplines in functional linguistics into a social modified and unified independent entity.

Several attempts have also been made by linguists to clearly demarcate the boundary of discourse using different parameters. One of such attempts uses medium as a criterion, thereby classifying discourse analysis into

conversational and textual analysis. Lambrecht (1994) typified what he calls "the universe of discourse" into "text-internal" and "text-external" worlds. The former involves the words, phrases, sentences and their meanings. The latter, which is the text-external world, comprises speech participants and spatio-temporal setting.

Analysts like Hodge and Kress (1991) and Jaworski and Coupland (1999) have widened the scope of discourse analysis to cover even non-linguistic semiotic systems of signaling meanings-those verbal artistic concepts like paintings, sculpture, photography design, music and filmings. This perhaps is one of the reasons why Cook (1992) describes discourse as "being large and rather messy" (p.2).

Brown and Yule assert that discourse can be interactional when it functions as a communicative social act, and transactional when its aim is to pass information; Interaction could be verbal and symbolic. However, from the perspective of discourse analysis, land agreement is largely transactional. The foregoing experience has firmly underscored the relevance of textual form to textual function. Lambrecht defines textual form as:

> *...the abstract world of linguistic representation created in the minds of the interlocutors in the process of communication. It is the manipulation of such representations that allows for the conveying of such information (p.37).*

Brown and Yule also affirm that "doing discourse analysis involves doing syntax" (p.-26). This is because even in explaining discourse acts and meanings, the rules of syntax guide in the construction of complex structures capable of conveying complex thoughts.

Discourse emphasizes that aspect of language which not only syntax but also semantics had problems in explaining because discourse transcends the boundary of syntax or any other features of language forms (Stubbs, 1983). This is because syntax is only concerned with well-formedness of a number of words along a syntagmatic axis while semantics takes up the meaning conveyed through this arrangement. Both fields therefore operate at sentence-based level. Discourse analysis includes contexts, interactants and their roles as well as the means of communication. Cook summarizes that discourse is both textual and contextual. This Dillion (1997) agrees with, stressing that language forms are only surface realizations of communicative strategies. Chimombo and Roseberry (1998) further emphasize the symbiotic relationship between the text and context. They assert that

> *"a text is a product of context and language in much the same way as acceptability is a product of grammatucality and appropriateness" (p.4).*

Therefore, an appropriate context and an acceptable language, produce a good text. Due to structural complexity of the legal language, syntactic prominence shall be accorded to syntactic concepts like embedded, subordination and co-ordination as well as rank shifting. This use of punctuations will also be examined.

Embedded expressions perform different functions; defining and non-defining. A defining phrase or clause restricts possible interpretations while a non-defining one, marked off by commas, is invariably not significant and thus can be deleted. Eyers (2000) asserts that there is no limitation on the number of embedded expressions in a sentence. However, if these embedded expressions are not properly guided with relevant punctuations, such sentence structure becomes clumpsy.

Oluikpe (2002) also observes that a non-defining clause does not use the relative pronoun that. This implies that any relative clause introduced by "that" is a defining clauses. A defining clause identifies its antecedent while a non-defining does not.

Subordinators like "which", "where", "who", "that" because" to mention but few are used to subordinate clause(s) while co-ordinators like "and", "but", for examples, join structures of equal grammatical status i.e. join two or more main clauses. Both subordinators and co-ordinators are two major devices employed to prolong the length or/and change the type of sentences.

The need for clarity and correctness justifies the proper use of punctuation marks. Some punctuations feature more regularly than others. In land agreement like other legal documents, the colon, semi-colon, comman and full-stop are the commonly used. Even then, they feature sparingly. This death of punctuations also constitute the difficulty often encountered in decoding a legal document.

Rankshifting is a concept introduced by Halliday (1967) in his Scale and Category Grammar. This theory according to Butter (1985) quoting Halliday (1967)

> *"allows for the rank shift in more complex structures; a unit can be, as it were, transferred to a unit of lower rank and can then be included (in terms of the 'consist of' relationship) in unit of equal or lower rank. A unit may not however, behave as if it were a unit of higher rank; that is there is no "upward rankshift" (pp. 16-17).*

Structural units have horizontal value because according to Matthiessen and Halliday (1997). These units "are fully accounted for by their structures and that "rank orders units into a hierarchy according to their constituency relation: the highest-ranking units consist of units of the rank immediately below, these units consist of units at the next rank below, and so on, until we arrive at the units of the lowest rank" (p.22).

This theory seeks to account for the form and function of each item at all ranks. Alabi (1997) reviews further that both group and clause are ranks that are normally rankshifted in language structures.

A discourse genre determines an acceptable language. Chimombo and Roseberry identify register as an important feature of language acceptability. Halliday, M.A.K; Mcintosh, A; and Strevens, P. (1964) postulate that register is discourse-based. They argue that:

> *"The category of register is postulated to account for what people do with their language. When we observe language activity in the various contexts in which it takes place, we find differences in the type of language selected as appropriate to different types of situation" (p. 87).*

Hatim and Mason (1991) also submit that register is used to capture differences in grammar, vocabulary, etc. between or among various language activities. As a result, it is important to establish the situation-use relationship of a language register. Birch and O'Toole (1987) further stress the importance of register in accounting for the relations between language forms and features of situation in which they are used.

Register variables are classifiable into three interdependent aspects, namely: field, tenor and mode. Field is wider in scope than subject matter. For instance, political discourse as a field may be about law and order, taxation, foreign policy or political campaign to mention but few. Gregory and Caroll (1978:53) describe field as "the purposive role" while Crystal and Davy (1969:71) simply call it "province". Tenor of a discourse signifies the relationship between the address and the addressee. It is this variable that strongly determines the choice of words in a discourse. Mode is the selected medium. Mode could also mean a channel or means, e.g. telephone, essay and letter, these three variables provide the basic connections for communication to be effective. Hatim and Mason summarize the concept of these three variables thus:

> *The three variables are inter-dependent: a given level of formality (tenor) influences and is influenced*

by a particular level of technicality (field) in an appropriate channels of communication (mode) (p.51).

The Exchange Structure

In a procedural text like the legal discourse writers give orders and the necessary information. The orders are expected to be adhered to failure of which certain penalties are specified (Butt, Fahey, R. Spinks, S., Yallop, C. 1999). Therefore, imperative sentences are selected to accomplish this task.

Apart from the language structure, the exchange structure of a discourse also aids communication. Sacks (1967) defines an exchange structure as the minimal unit of an interactive structure comprising INITIATION, RESPONSE and FEEDBACK, feedback being an optional unit. The IRF exchange structure is basically aimed at analysing conversational exchange through which individuals' turn allocations are captured. The researcher, however, adopts a symbolic representation for each of the units I-R-F, apart from crediting the textual information in the data to the two major discourse interactants – The transferor and transferee-, the significance of signatures and legal seal as non-verbal meaning-complementaries are also emphasized. Jegede (1998) explains that signing is desired but not compulsory in the English Common Law Because thumb print can be used to replace it. He further explains that the legal seal is a proof of due execution of an agreement.

A fair knowledge of the exchange structure facilitates identification and classification of discourse acts. Act which is the minimal unit in discourse cline can be classified into three: informative, elicitation and directive acts. Information act can be negative or positive and it concerns giving information about something or someone. Elicitation is another device used to elicit information while directive act is an act of command or request.

Therefore, how a quantum of information is coherently packaged and rendered and how the intended nuances of meaning are expounded are central to discourse analysis. To further understand the process of discourse, it is pertinent to examine how varying information units are packaged in the information structure.

Information Structure

Stubbs (1983) asserts that an utterance meaning is determined by discourse constraints because discourse has certain linguistic organization, amenable only to linguistic explanations. Lambrecht (1994) affirms the importance of formal properties of sentences but more importantly is the linguistic context in which these sentences are used. This description of the

formal and functional structures of a language is what the information structure represents. Lambrecht defines information structure as:

> ... *that component of sentence grammar in which propositions as conceptual representations of states of affairs are paired with lexico-grammatical structures in accordance with the mental states of interlocutors who use and interpret these structures as units of information in given discourse contexts (p.5).*

Halliday (1967)'s approach to information structure is that which is intonationally-based though Halliday also agrees that certain syntactic forms can equally indicate *the given or old information* (through the use definite articles) as well as the new information (through the use of the indefinite articles). Lambrecht (1994)'s taxonomy of the information structure is diagrammatically explained below:

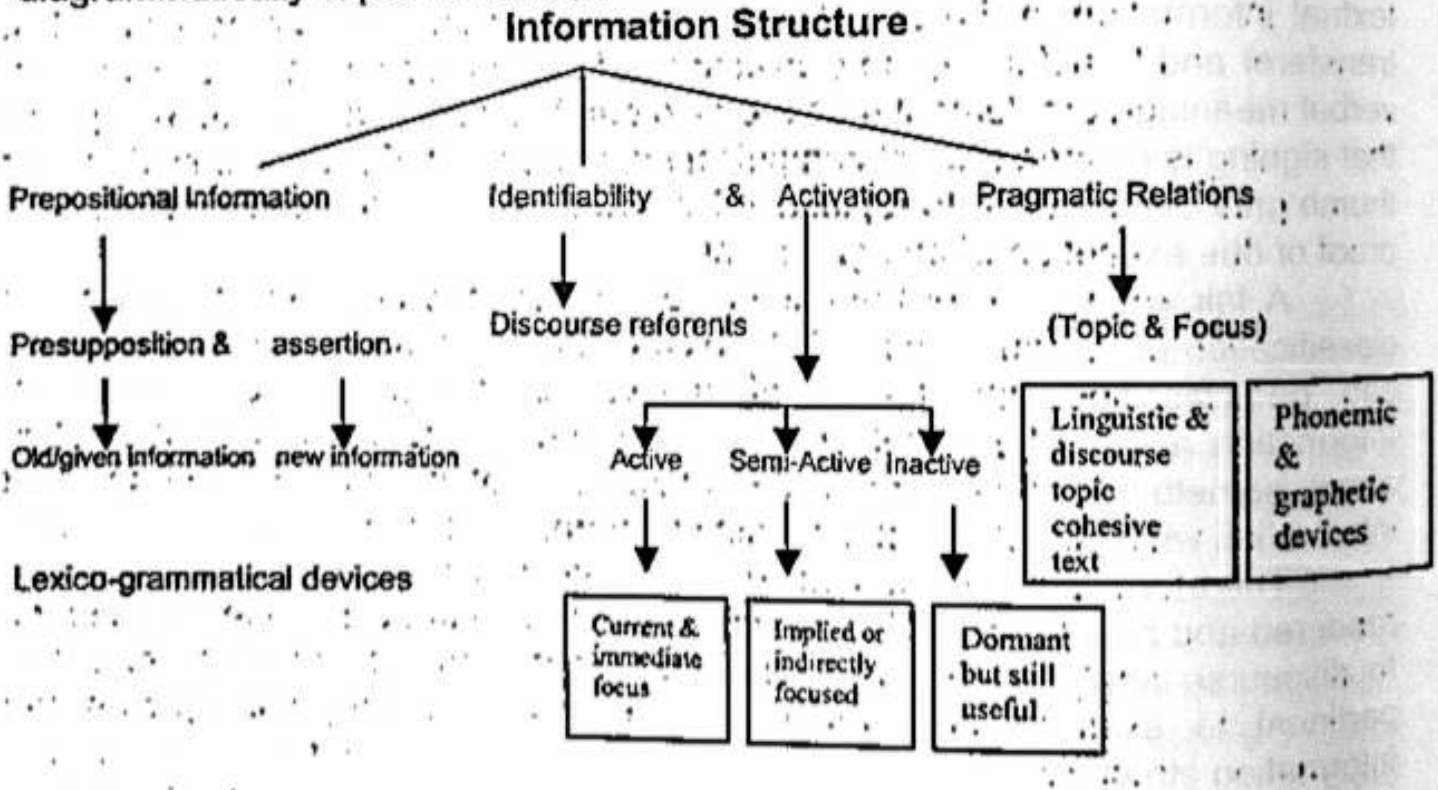


Fig 1: A diagram showing Lambrecht's (1994) classification to information structure

Presupposition implies what the speaker assumes the hearer knows. This is what Strawson (1964) quoted in Lambrecht referred to as "presumption of knowledge". An assertion is what the speaker knows but later transmits to the hearer through utterances Strawson again refers to this as the "presumption of ignorance". Presupposition marks the old or given information with definite

article while the assertion which signifies a new information is marked with a grammatical construction or the relative defining clause.

Lambrecht simply calls identifiability the designated referents in the mind of the hearer. Referent can be identified by discourse organization or by mentioning the referents. Activation is defined as a process of appraising the status of representation of an identifiable referent. A referent is active, if it is the current focus of the speaker; semi-active, if it is only implied or not the current focus of the speaker. Semi-activation however complements the activated one. An information is said to be inactive if it is dormant or not necessarily recalled at the particular moment of an utterance.

Pragmatic relations comprises the topic and focus. The overall discourse topic is decentralized and distributed within sentences. These sentences in turn, form a cohesive text. Focus is marked by stresses and intonational variation at the tonic level, and by various highlighting devices at the graphetic level and the use of certain words and expressions at the level of syntax.

Data Analysis

Land agreement, like other legal document is characterized by legal jargons, archaism and conservatism. It requires the reader to wade through a labyrinth of repetitive structures, unconventional syntactic forms and uncommon morphemic formations.

The introduction of embedded structures serves as a device used to effect a change in sentence types as well as to expand sentences. Below are few examples:

i. ... the vendor which expressions shall where the context so admits include his heirs, assigns; successors.... (embedded adverbial clause underlined).

ii. That the vendor... has agreed to convey a portion of land in this, genuine document to the purchaser... (embedded complex-prepositional phrases underlined).

The import of these embedded expressions lies in the great importance attached to definiteness and clarity.

Legal syntax is quite a unique one in terms of sentence formation. The complexity of its syntactic structure is further strengthened by the preponderant use of embedded structures most of which are in forms of phrase and clause adverbials, and all of which are inserted intermittently at different points. This device helps expand sentence constituents or and change sentence types. Below is a table showing the frequency of the embedded structures in simple sentences and sentence types.

	Simple sentences		Compound	Complex	Compound / Complex
Data A	Non-Embedded	Embedded			
	1	2	1	1	1
Data B	2	4	1	1	1
Data C	2	7	2		1
Total percentage	13.32%	53.28%	14.8%	07.4%	11.1%
Percentage	66.6%				

Table 1 shows the frequency of the sentence types and the embedded expressions in simple sentences.

About 62% of sentence elements are rankshifted and could be found in land document. For instance, this example below shows a rank that is equal to itself.

S p c
m h q

i. ///The vendor of the above address has agreed to convey...

Below is the third example (with clauses) showing a rank higher then itself.

S p c
m m h q

ii. ///That the vendor (of the above address) has agreed... co-ordinate.

(S-subject, P-predicate, C-complement, A-Adjunct) (M-modifier, H-headword, Q-qualifier)

The dependent clause was also observed to be shifting rank to function only as a unit in the structure in which it is equal in terms of the grammatical hierarchy. In this situation, a rank is said to be higher than itself because a constituent unit in a group which, by grammatical rank scale, is higher than the group in which it is functioning as a constituent shifts its rank downward from its higher grammatical unit to a mere constituent unit of a small group. To illustrate this, here is an example.

S p
m m h q

///... And that anyone// who may become his opposition// must be lawfully declared

by competent court of law as illegal, null and void///.

In legal discourse, the that-clause normally introduces a condition or conditions either to be met or abstained from. This is a means protecting the rights of the person who has paid for either the land or/and structure(s) on it.

From the foregoing, one observes that land agreement uses few punctuation marks. The choices is however deliberate. It is aimed at avoiding misinterpretation, or at keeping to this tradition in legal discourse, and at creating continuity in sentence structure as well as maintaining unbroken chain of thought. This dearth of necessary punctuation marks is intended to block all access to inclusion and/or omission of an unwanted expression to find its way into the structure. Consider how the inclusion of punctuation marks would have been required here but they are omitted. Examples:

The vendor hereby conveyed to the purchaser ALL That PARCEL OF LAND...at... Kwara State. To HOLD the same unto...

Delete the full stop (.) to be grammatical

There is no subsisting third party. Is right

Delete the full stop (.)

... third party is claims instead of third party's claims

(apostrophes and not auxiliary verb is required)

Verbosity is another feature of a legal discourse. This device corresponds with repetition in spoken discourse. It is either for emphasis or clarity or both. It is an exigent device in written medium to fill the vacuum created by inaccessibility of the writer to immediately and simultaneously assess his audience. More often than not, synonyms are used to achieve this purpose as evident in the examples below:

i. Land situated and being lying
ii. Abdicated, surrendered relinquished
iii. Illegal, unconstitutional, invalid, unwarranted, counterfeit
iv. Irrevocably, incontestably, irreclaimbly, undeniably

Synonym is a linguistic device that serves as an "escape route" for lawyers in the face of litigation or to make the draft "so professional" that an uninitiated will find it difficult to write or understand. To a layman, this complex structure also wields great recognition to the legal documents. This extreme wordiness is necessary and justifiable for extreme precision and not for the purpose of creating synonyms. Synonyms are exclusive terms or registers in law and they strongly aid effective communication. Halliday, et al (1964) observe that synonym determines the identity of a given register. At the legal lexical items are essential in creating unique form and function to the discourse as observed by Babatunde (1997).

> *A writer deploys lexical items to make meaning, a proper analysis of the lexical structure of this writing is a necessary step towards explicating his message. This becomes more significant if it is realized that the writer in question is operating in a social, cultural and linguistic convergence, where the ultimate consideration is finding an appropriate means of expressing a latent but nagging sensibility and reality (p. 174).*

The technically in the choice of words as well as the absence of personal pronouns are all indicate of the level of formality between the transferor/vendor/assignor and transferee/vendee/assignee. This in turn, influences the level of technicality in this channel of communication. Apart from this observation, the deployment of proper nouns instead of personal pronouns is to depict that the land agreement carries shared, precise and unambiguous message. This is because lawyers rid words of subjectivity in order to enhance well-packaged and professionally organized information from and to the discourse participants.

IRF Exchange Structure

The legal draftsman is playing dual roles; he prepares the land agreement document and he interprets it to the transferor and transferee respectively. It is worth explaining at this point that, the legal draftsman imbued with his professional skill is, in this context, an active participant. He plays intermediary and dual roles, since he writes and possibly interprets the land agreement to the two major active participants. Indeed, the draftsman is in practice more actively involved in terms of the content of agreement that the so-called major participants. This communicative network further proves that the draftsman is an active discourse participant in this communicative process.

The INITIATION here is symbolic or graphetic – it is the draft statement of agreement stating the conditions for the transfer of a parcel of land. The authority to initiate such discussion is always vested on the transferor. The peculiarity or uniqueness of this lies in the responsibility usually assigned to a professional (lawyer/draftsman). The transferee's RESPONSE is indicated by his endorsement of the document. This means that the response is graphically expressed. However, the refusal to sign may signify negative response. In case of illiteracy, thumb print can replace signature. The FEEDBACK, like initiation and response is also symbolic. This is symbolically represented by affixation of a legal seal on the document. It is basically essential and it implies "Okay" thereby binding the parties to this transaction.

Two discourse acts are noticed; the information and directive acts. The former gives new information on the present status of the subject of transaction – the land. In addition, it explains the new legal rights enjoined by the transferee/assignee/vendee (purchaser) as a result of certain financial obligation met by the transferee (refer to data 001).

This text further employs directive act to warn against future claim or trespassing by an unauthorized person or group of persons. If, however, this type of claim becomes necessary, the document request the prospective claimants to seek for a reversal of this agreement in a competent court of law (refer to data 002).

The Graphological or Printed Device

The graphological or printed device is of significance to the discourse interactants – the writer/transferor/proxy and the reader/ transferee/vendor/assignor. All capitalized words or expressions highlight the participants and the message/context. For instance, the transferor's/ vendors/assignor's names, addresses, the trasnferee's/vendees/ assignee's names, addresses as well as the setting i.e. the location of the land, amount offered and date of purchase are well foregrounded. Even a glimpse at a land document offers a quick of information about the discourse participants and topic of discussion – the tenor. All these pieces of information are contained in the sector of land agreement called THIS AGREEMENT.

All the words written in uppercase above constitute new information and the focused information about the transferor and transferee and those "deriving title under his authority" as the co-designates. See the appendix for the data.

THE WHEREAS is another information unit that seeks not only to define but also to stipulate the rights conferred on the transferee as a result of certain obligation fulfilled. See the appendix for the data.

IN WITNESS: States the terms of the agreement, the cost price of the land, location and measurements are stated. Amount of money is specified in figures and words. This section also pronounces judgement on the land. See the appendix for the data.

THE SCHEDULE: The thrust of this section is also specifiable in WITNESSES. However another land agreement format has THE SCHEDULE as an independent separate section. In this case, the section describes the location and measurement of the land. Where IN WITNESS follows THE SCHEDULE the former only introduces the signatories to the agreement. Most likely, this format is often preceded by the specification of the terms of agreement in its THIS AGREEMENT. In case a signatory cannot write, thumb printing is allowed. See the appendix for the data.

In addition, the mode is a written code but provision is made, if need be, for the interpretation of the text before the endorsement is effected by the interactants. This information is specified in Jurat. (refer to data 003)

This provision enhances effective communication between the two principal participants. It is observed that the law language is highly formal, technical and transactional. It is a discourse which entails sharing a piece of information between the transferor/assignor and the transferee/vendee/ assignee on the object of discussion-land.

Through the survey of various data from different sources, the researcher observes that it is either due to the incompetence in syntactic rules on the part of some Nigerian draftsman as well as professional and education incompetencies on the part of those saddled with the responsibility of typing this document or dogmatic adherence to legal drafting tradition that further complicate the difficulty being experienced by the readers of this document.

Conclusion

By now, it should be clear that a special discourse requires a special analysis. How to code and decode a land agreement text is a complex task, yet it is the feeling of every educated person that this land discourse should be accessible, interpretable, comprehensible and communicative regardless of its professional touch.

Given this situation, discourse analysis offers an alternative solution capable of ensuring not only communicativeness between the interlocutors but also appreciating the coherence of the text in totality. Discourse analysis offers the reader a linguistic/discourse approach, to the study of a legal discourse it also avails the readers the opportunity to empirically test how communication is influenced by forms and functions of a discourse genre.

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