



PRAGMATIC ANALYSIS OF HEDGING IN SELECTED LEGAL “WILLS”

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Abstract

This study identifies and analyzes the use of hedging in some selected legal genres. The data consists of three purposively selected documents from published wills. Salager-Meyers (1997) perspectives were used for the identification and definition of the lexical items which signal hedging. Following the identification of the selected lexical items, the descriptive research design was used. Also, a multi-dimensional approach based on the insights from Biber (1995) was adopted for the analysis. The data include Gani Fawehinmi's Will, Will in Contemplation of Marriage and Gift during Widowhood. The findings revealed that hedging is used in the writing and drafting of wills as a strategy by which legal writers mitigate and soften the force of their utterances, it also revealed that permission and its modifying device can manifest as hedging in the two genres. The study recommends among others the need to align with ESP practitioners for material design and production on hedging as a course in the teaching of English for Legal purpose at the tertiary and university level.

Key words: genres, hedging, lexical, mitigate, multi-dimensional, soften

Introduction

In English, there are various kinds of words and sentence patterns which can function as hedges since they have many semantic features and pragmatic functions, hedging is one part of epistemic modality with regard to its pragmatic functions. Hedging in linguistics indicate the speaker or writer's lack of an explicit and complete commitment to the truth value of a

proposition, as well as the speaker or writer's unwillingness to make the commitment. Therefore, the mainstay of previous approaches to the study of hedging has been Semantics. Thus, earlier research on hedging centered on the linguistic function of hedging neglecting the pragmatic function (Clemen 1997). 'Hedge' as a linguistic concept was introduced by Lakoff (1972 cited in Crompton (1997:271) defines the term hedges/hedging as lexical units or expressions "whose job is to make things fuzzier or less fuzzy". By this definition, the logical properties of individual word and phrases were of paramount interest to Lakoff and not the communicative value of hedging. In accordance with Lakoff's model, Brown and Levinson (1987) define the concept as "a particle, word or phrase that modify the degree of membership of a predicate or a noun" This definition also failed to take into account the communicative value of hedging (Markkannen and Schroeder (1992).

The postulation of an interactional strategy called hedging is a characteristic of a communicative model of Markkannen and Schroeder (1992). They rejected Lakoff's model and approached the concept of hedging taking into cognizance that hedging typically manifests in a context. Hyland (1996) summarizes the definition as follows: "A hedge is any linguistic means used to indicate either:

- * Lack of complete commitment to the truth of a proposition or
- * Desire not to express a perspective on their statements.

An indication of a paradigm shift can be observed in the plethora of pragmatic strategies (masking, vagueness, omission, indirection, mitigation etc) used in interpreting hedging (Clemen 1997). In view of the insights from other current intellectuals is the need to further explore the phenomenon of hedging beyond linguistics with a view to determining other communicative strategies used in achieving it.

Theoretical framework

The theoretical framework of this investigation comprised of some concepts and discussions presented in Brown and Levinson's (1978) original face-saving model of politeness and their subsequent (1987) revised version. Their Politeness Model is founded on the notions of "face" offered by Goffman and "conversational logic" proposed by Grice. Brown and Levinson (1978) constructed their theory of politeness on the premise that many speech acts are intrinsically threatening to "face". Hyland (1994) summarized the functions of hedge words and considered two main roles for them, i.e expressing claims with certain degree of caution, modesty and humility and diplomatic negotiation of the claim when referring to work of colleagues and competitors. Clemen (1997) believes that hedging can be achieved through setting utterances in context rather than straight forward statement. Varttala (1999) investigated the issue from another point of view. To him, the communicative functions of hedges are different in specialist research articles and popular research articles and maintained that in popular research article, hedging indicates "textual precision and interpersonal negative politeness". Myers (1985) had the same idea, but considered hedging as part of a politeness system whose job is to reduce the threat contained in the author's claim to the face of the readers. Other commentators underscored the role of the audience in the process of hedging. Therefore, it can be concluded that hedging is the expression of tentativeness and possibility in language use to reduce the strength of statements made by writers. It is in view of the facts stated by these scholars that this research attempts to investigate these occurrences in the legal genre of wills.

Empirical studies on hedging

The conventions of the discipline in question have their role in scientific writing. Researchers have found that hedging is used differently across different disciplines. Varttala (2001), for example, in his study on hedging in three disciplines of Economics, Medicine, and Technology

has reported that the incidence of hedging in Economics is the highest and the overall number of hedges in Medicine and Technology is about one third lower. He considers the object of the study, the different types of material and method used to study these objects and the general nature of disciplines as the main reasons for such variations. Salager-Meyer's (1994) study on hedges in Medical English written discourse has focused on the distribution of five pre-established hedging categories (i.e., shields, approximators, authors' personal doubt, emotionally-charged intensifiers, and compound hedges) in different rhetorical sections of two fundamental Medical English genres - case report (CR) and research paper (RP). Hedging is also studied in modern Economics to examine how it can modify claims in research articles. Bloor and Bloor (1993) used a set of eleven economic texts to extend the empirical evidence on hedging in this field.

Vande (1985) considers the use of hedging as showing lack of full commitment to the propositional content of an utterance. In other words, hedges e.g. *perhaps, seem, might, to a certain extent* are by him seen as modifying the truth value of the whole proposition, not as making individual elements inside it more imprecise.

Thus, Markkanen and Schroder (1989; 1992) who discussed the role of hedging in scientific texts, see them as modifiers of the writer's responsibility for the truth value of the propositions expressed or as modifiers of the weightiness of the information given, or the attitude of the writer to the information. According to them, hedges can even be used to hide the writer's attitude.

Communicative Functions of Hedging

The function of hedging with respect to vagueness was more closely studied in the 1980s. According to Pinkal (1981) linguistic hedging serves to specify "vague expression". The role of hedging as an indicator of vagueness and imprecision is discussed in the frame work of (language for specific purposes) texts.

Salager-Meyer (1995) also believed that the main functions of hedging is to protect the authors against reactions which their propositions might provoke and reflect their modesty and defense towards the target audience.

Hedging acts as softeners, among others: to soften claims (Hatch, 1992), to soften complaints, requests and commands (Brown and Levinson, 1987) to soften performatives (Frazer, 1975, Lakoff, 1972), and to soften criticism (Drechsel, 1989). Examples of each softener are enunciated below for proper understanding, examine the following

For softening claim : The man *appears* to be humble.

For softening complaint : Please excuse me. I *think* the man is insane.

For softening request : I was *wondering if probably you could* do me a favour.

For softening command: Get out of here, *will you?*

For soften performatives: I *can* promise you that I will make it up to you.

To soften criticism: *Well, personally, I think it would be better if* the table was placed there.

The second function is as cooperative devices in conversation, for example, to diminish face threatening acts (FTA) such as interrupting; to negotiate sensitive topics and encourage participation (Coates 1988).

Hedging strengthens or weakens statements (Brown & Levinson 1987), while Hatch (1992) suggests that hedges can smooth disagreement with a conversational partner. It can also act as a politeness strategy such as in understatement (Brown & Levinson 1987).

Methodology

Various categories used to express hedges were proposed by some scholars to offer an overview of the main communicative strategies used by authors of scientific and legal texts to express politeness and to make their messages rhetorically appropriate. To this end, the approaches on the insights of Salager- Meyer's strategic stereotypes (1997) was used for the identification of modal auxiliary verbs, lexical verbs, adjectival, adverbials, modal phrases, compound hedges and the "if clauses". An exhaustive reading of the texts was done to locate for analysis the areas where the author's intentions were revealed. Also, a multi-dimensional approach based on the insights from Biber (1995) was adopted for the analysis.

The selected lexical items interpreted as signaling hedges were classified and analyzed according to their linguistic realization and the communicative strategy used by each of them.

Wills

Wills document in which a person specifies the method to be applied in the management and distribution of his estate after his death is the legal instrument that permits a person, the testator, to make decisions on how his estate will be managed and distributed after his death. An instrument disposing of Personal Property is called a "testament," whereas a *will* disposed of real property. Over time the distinction has disappeared so that a *will*, sometimes called a "last *will* and testament," disposes of both real and personal property.

If a person does not leave a *will*, or the *will* is declared invalid, the person will have died intestate, resulting in the distribution of the estate according to the laws of Descent and Distribution of the state in which the person resided. Because of the importance of a *will*, the law requires it to have certain elements to be valid. Apart from these elements, a *will* may be ruled invalid if the testator made the *will* as the result of undue influence, fraud or mistake.

A *will* serves a variety of important purposes. It enables a person to select his heirs rather than allowing the state laws of descent and distribution to choose the heirs, who, although blood relatives, might be people the testator dislikes or with whom he is unacquainted. A *will* allows a person to decide which individual could best serve as the executor of his estate, distributing the property fairly to the beneficiaries while protecting their interests, rather than allowing a court to appoint a stranger to serve as administrator. A *will* safeguards a person's right to select an individual to serve as guardian to raise his young children in the event of his death.

The corpus

Nwogu (1990) posit that in the analysis of written texts so much depends on the level to which the text that makes up a corpus enables an investigation of the kind of problems that the research intends to examine. This is a corpus based study derived from written *wills*. However, it is on this premise that the descriptive research design was adopted since it is neither scientific nor experimental research that deals with too much manipulation of figures and variables.

The corpus is made up of three purposively selected *Wills*, the texts contained different hedging devices with the intention of evaluating the communicative function used. However, the contents and lengths of the selected variables differ since they are all from different sources. The selected corpuses are as follows:

Selected corpus of study

S/NO	TEXT TYPE	TITLE	SOURCE	DATE
1	TEXT A	Gani Fawehinmi’s Will	PM NEWS NIGERIA	4 th June, 2010.
2	TEXT B	Will in Contemplation of Marriage	Nigerian Conveyancing Practice, Drafting and Precedents	1994
3	TEXT C	Gift during Widowhood	Nigerian Conveyancing Practice, Drafting and Precedents	1994

Data presentation

Various approaches used to express hedging in different areas of human endeavors were proposed by scholars. The texts collected and analyzed contain epistemic lexical items representing seven word classes. Testators use hedges as a politeness strategy to either instruct or permit on certain issues or decision taken, such issues or decisions could be positive or negative, but the selected lexical items are there to maintain social interaction.

Modal auxiliary verb

The modal auxiliary verbs are the lexical items most typically associated with hedging in English and are used to perform various functions which include the expression of possibility, probability and certainty, possibility and ability, permission, request, offer, invitation, suggestion and instruction as well as wants and wishes (Fakuade 2000). Modals are one of the most frequently used forms of hedging; there is a noticeable use of modal verbs to indicate politeness by the testator or *will* writer. The function of modal can be observed in the context of use from the selected text below:

*I direct that my trustee **may** during her Widowhood allow her to occupy the said property*
Text C (lines 8-9)

In the example taken from text C, the modal tone down the proposition and adjust the degree of certainty on the writer’s part, According to Coates (1983), *may* and *might* are the primary modal auxiliaries used for epistemic possibility which can express the speaker's lack of confidence in the proposition expressed. Modals can equally indicate assessment of possibility which can be used in different senses, but the major distinction is normally made between epistemic and root possibility. The epistemic *may* shows that the occurrence of an event is not certain whereas root *may* show the possibility of an event in terms of natural facts. Another way of appearing “confidently uncertain” is the predominant use of modal auxiliary verbs in legal texts. They express permission, but have some other additional meanings used to convey possibility or probability. This feature is characteristic for common usage as indicated in text C. Modal in the text is used as a kind of possibility which is a subjective judgment concerning the possibility of a proposition as expressed in the corpus. It can be seen that *may* appears to be precise in legal language and also maintains a style and language that differentiate the genre from other professions.

Lexical Verbs as Hedging Device

In this study, lexical verbs constitute a typical way of expressing possibility. The study identifies certain main verbs that can be interpreted as hedges. The epistemic reporting verbs used in the texts include such verbs as *desire*, *administer*, *solemnize*, *observe*, *perform*, *entitle*, *proceed*, *deem*, *reserve*, *waive* etc. They are used as markers of tentativeness. Example:

*It is my **desire** that my executor and Trustee of this WILL should at any time be a corporation or an institution.*

Text A(Lines 14-15)

*This is the last will of me Ade of..... which I make this.....day of.....made in contemplation of my marriage with.....and conditional thereon so that unless and until my said marriage has been **solemnized** this my 'will' shall be of no force and effect.*

Text B(Lines 1-4)

The items identified from the selected texts are used as lexical verbs which signal hedging in the selected corpus. By using reporting verbs the writers in the examples used signals to the reader that what is said may not be perceived as the only possible interpretation, while in text B the identified lexical verb *solemnized* serve the function of rhetorical attenuation. This means that lexical verbs could be used to convey different degrees of tentativeness.

Adverb

There are a number of adverbs that were employed to produce the kind of meaning linked to hedging, Perkins (1983) lists several adverbs characterized in terms of their syntactic properties as "attitudinal disjuncts" that can be used to express epistemic modality e.g. *maybe*, *likely*, *possibly*, *partly* etc. Adverb is a class of word that legal writers use as hedges and can be linked by epistemic possibility. In the data that make up the corpus for this study, adverbials are used as amplifiers, which indicate the degree of certainty towards a proposition. The examples of adverbs used in the texts are: *jointly*, *partly*, *virtually*, *consequently*, *reasonably*, *particularly* etc. the excerpts below indicate their usage.

*Rabiat Fawehinmi, the eldest child by my second wife shall be entitled to 20% of all the proceeds of sale or lease of the house at Akure. It is the balance of 80% of such proceeds that could be **partly** used to effect any improvement or repair of Sabiu Ajose Crescent, Surulere, Lagos.*

Text A(Lines 95-99)

However, the adverb used as identified above prevents generalization and is specifically used to give background information and make inference and presupposition. Adverbs are used to present judgment and conclusion accurately enough for the purpose required and how the proposition can be mentally perceived under a specific communicative situation.

Adjective

Just as the case is with adverb, adjective could also be used to express tentativeness, the adjectives used in the texts include: *remunerated*, *special*, *leased*, *prescribed*, *disabled*, *concerned* etc. Example from the texts is shown below.

*This is the last will of me Ade Of----which I made this----day Of----made in contemplation ofmy marriage with----and conditional thereon so that unless and until my **said** marriage has been solemnized this my will shall be of no force and effect.*

Text B (Lines 1-3)

The lexical item used as hedging device above presents the information as uncertain, tentative, somehow ambiguous or not quite precise on the intended marriage. Hence the use of the adjective “said”

My Trustees shall be remunerated in accordance to their published scale of fees current at my death as varied from time to time during the administration of any trust arising under this will. The remuneration should however be reasonable and competitive with charges for similar services rendered by them to other parties.

Text A (Lines 16-17)

The above italicized adjective “remunerated” which is derived from noun is used as an epistemic adjective to motivate the reader to accept the given proposition. It is used in the text to motivate the Trustees who are the executors for the testator.

Modal Phrase

Although a modal is a type of auxiliary that is used to express ability, possibility and permission or obligation, modal phrases are used to express the same thing as modals but are a combination of auxiliary verb followed by a preposition. Here is an example from the text.

I HEREBY REVOKE all wills and condicils made by me AND DECLEAR this to be my last will but this revocation is subject to the condition upon my intended marriage being solemnized within.....months from the date hereof this WILL shall be absolutely void for all purpose.

Text B (Lines 5-8)

Hedging realized by “if” clause

Conditional sentences are sentence that discuss factual implications or hypothetical situations and their consequences. Languages use a variety of conditional constructions and verb forms such as the conditional mood to form such sentences. Example of such occurrence from the text can be seen below.

Subject to clause 5 © above, if any part of the houses is to be let or leased out, all the children by my first wife and their mother must agree to that effect.

Text A (Lines 62-63)

If this WILL becomes operative under the foregoing Clauses the revocation hereinbefore contained shall not extend to the will made by me on the.....day of..... (if different dates are involved insert them) which will and codicil/s I now confirm in All respects.

Text B (Lines 11-14)

In text A, the conditional statement posits that the first wife and mother of the testator’s children must agree to the leasing of the house as introduced by “if” clause. The same applies to the example in Text B. Syntactically, the condition is the subordinate clause, and the consequence is the main clause. However, the properties of the entire sentence are primarily determined by the properties of the (condition) its tense and degree of factualness.

Conclusion

Based on the outcome of the analysis carried out in this study, it was revealed that hedging abound in legal documents. The need for will writers to protect themselves against any possible negative consequences of being proved wrong seems to be fulfilled by the strategies of politeness, mitigation, vagueness, and understatement. Testators tend to resort mainly to lexical choices which add a certain amount of information to the semantic contents of their statements. They try to be more precise and accurate in the selection of words which they judge to be the

most appropriate for fulfilling the specific goals of these communicative situations. Hedging contributes a lot to the mystification of an approximate majority of the number of lay audience whose lives are affected by the law. Hedges can make communication euphemistic, moderate, polite and flexible, which effectively helps to maintain and adjust the relationship between speakers and hearers and keep communication smooth

The outcome of the analysis also suggests that *permission* as an additional level of strategy and its corresponding modifying devices, i.e, the modal phrases and compound hedges could be used as hedging in *wills*. **Permission** as a level of strategy as observed by the researcher involve the act of giving a formal, usually written polite authorization since all the data used for this analysis were presented or executed after the demise of the testator. The five distinct strategies defined by Clemen (1997) are, politeness, indirectness, mitigation, vagueness and understatement. However, based on the findings of this study, the researcher discovered that the typology can be extended to include *permission* with its corresponding modal phrases and compound hedges as mitigating devices respectively as illustrated in the modification of Clemen (1995) pragmatic strategies and modifying devices:

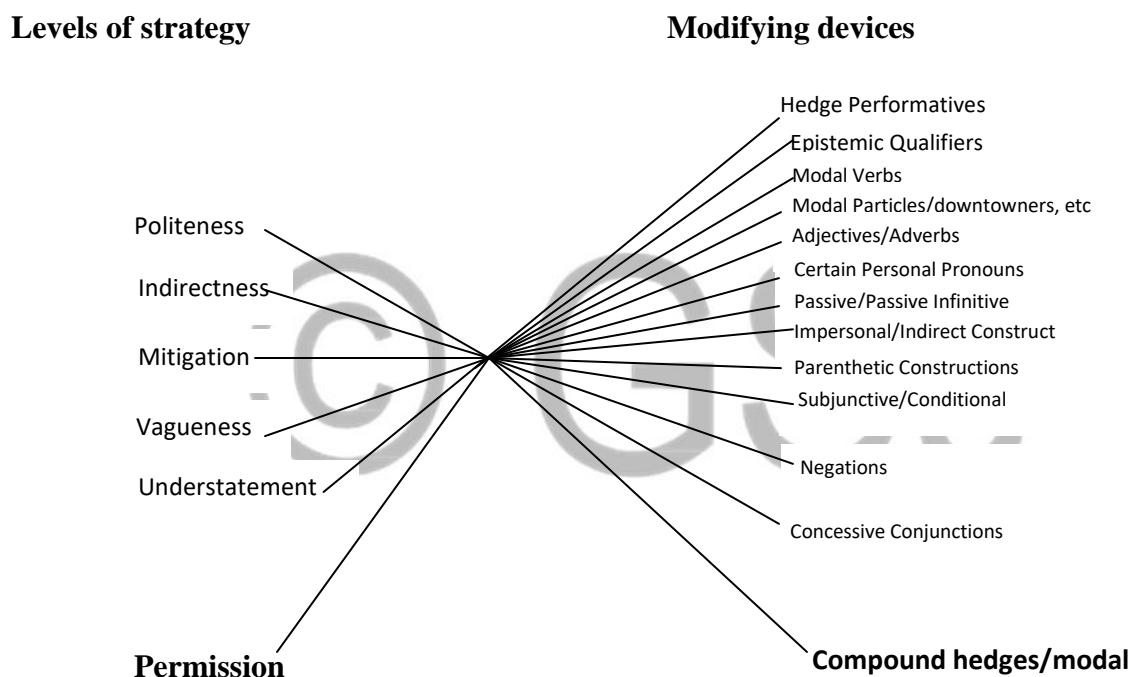


Fig. 2: Pragmatic strategies and modifying devices

Source: adapted from Clemen (1997) by researcher

Conclusion

As can be observed from the findings, hedging is a unique feature which when properly applied, ESP specialists would be able to use them for the documentation of legal materials for easier comprehension by clients outside the legal profession which is often characterized by difficult language and vague expression and accurately prepare course modules on hedging to serve as a guide in the teaching of English for legal purpose, which will increase students' level of awareness to hedge words, leading to their better understanding of conventions on hedging device.

Recommendations

This study hereby makes the following recommendations:

- i. Since Law is a noble profession, there is need to align with ESP practitioners for material design and production on hedges as a course in the teaching of English for Legal Purpose at the tertiary and university level.
- ii. There is need to focus more attention and expand the scope of hedging in legal documents since it is more prevalent in the sciences, economics and even politics.
- iii. Hedging appears to be a convention of legal texts so it should be studied as a genre convention, a style of writing peculiar only to the legal discourse.
- iv. Further research on hedging should go beyond sentences to paragraphs.

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