

ARCHAISMS IN LEGAL CONTRACTS- A CORPUS-BASED ANALYSIS

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ABSTRACT: *Language is particularly significant in law because it is through it that law finds expression. From formulation to interpretation and enforcement, law exclusively depends on language. Legal contract is notorious for formalities and unchanging nature, especially with the use of archaic words and formulaic expressions is an important genre of legal English. Although the formalities afford lawyers opportunity to achieve “precision”, they constitute a serious challenge for the layman. This study examined the frequency, structure, and meaning of archaisms to argue that the elements are operational tools in legal contracts. The data for the study were derived from ten purposively sampled legal contracts (scanned and converted to electronic-version) of about 7116 words of the Akure Judicial Division of Ondo State Nigeria. With corpus linguistics methodologies, using register analysis within the purview of Systemic Functional Grammar, the study adopted the content analysis methodology to identify archaisms in the legal contracts, and to quantitatively and qualitatively analysis the data. The study found 20 archaisms of 4 categories occurring 187 times (2.6%) of the total number of words to justify the claim that archaisms, which are no more found in general English usage, are still very much in use in legal documents, especially contracts. This study concluded that archaisms which according to lawyers, are used to lend a touch of formality and precision to legal language, should give way to modern words which can serve both lawyers’ and non-lawyers’ needs.*

KEYWORDS: Archaisms, Content Analysis, Corpus Linguistics, Language, Legal Contract, Register Analysis

INTRODUCTION

Every field of expertise develops its own language features (Gibbons, 2003, p.36). Legal English has developed certain peculiarities that have prompted the discussion of the connection between law and language with reference to specific social functions, features and contexts. This shows that language makes social activities possible. Language is a form of social action (Agha, 2007), and law, on the other hand, is a mechanism which regulates social relationships. All social activities and relationships are subject to legal regulations, if human society would not degenerate to chaos and sink into oblivion. It can, therefore, be deduced that people, language, and law are inter-dependent and interrelated (Abubakar, 2004, p.28). Since language is very central to the practice of law, it is therefore necessary for us to investigate some of the forms and techniques of the legal language.

As language is used in every field of human endeavour, it has a particularly striking significance in legal discourse because language is the tool of trade of the legal profession. Danet (1980, p.273) posits that “the study of legal discourse is concerned with the nature, functions, and consequences of language use in the negotiation of social order.” There are techniques of language use in the legal profession that make the field stand out in terms of

stylistic effects. That is, legal documents are specially written with a very high implication for style and technicalities to achieve precision. Some of the critics of legal language offer the argument that, due to its technicality, the legal language is different from the ordinary language. Menon (1993, p. iii-iv) points out that:

the language of the law is not just English as ordinarily understood, but a varietal system of technical terms, situational meanings, complicated procedural arrangements, etc. which communicates, at least among the law men, in a unique style, imperceptibility interwoven with certain juristic traits and judicial qualities.

Contract refers to an agreement establishing, moderating, modifying and terminating the civil rights and obligations between subjects of equal footing (Xie, 2006, p.18). As a written variety of English, contract, in the words of Hu and Lu (2017, p. 800), belongs to legally binding official document that defines the rights and obligations of the contract signatories. Contracts, which basically can be deeds or agreements, play an important role in modern or present-day national and international trades, private and public businesses, individual exchanges and so on. It is lawyers that handle this aspect of business relations as they interface between two parties with their trade tools, words. Contract, a typical legal document, preserves some archaic words, which are lawyers' daily bread, but to which most non-lawyers are sometimes exposed, and unlike other variety of English where archaic words are no more in use, contract English is well studded with so many archaic words such as *hereby*, *hereof*, *hereto*, *hereunder*, *hereinafter*, *hereafter*, *thereby*, *thereunder*, *thereof*, *therefrom*, *whereby* and *whereof* (Guangqi, 2014, p.58). At the lexical level of analysis, legal English exhibits some peculiar technicalities, prominent among which is archaism which has been variously captured by scholars.

Archaism: Meaning and Origin

Archaism is an old and outdated word or expression that is still in use in legal writing. It is an English lexical feature which translated from countries like France, Greece, and Latin in old English period or Middle English period around AD 450 to 1150 (Li, 2006). To Hu & Lu, archaism is old English, and it is rare in daily modern English but often appears in legal contracts (2017, p.279). The significant difference between language choice in legal contacts and other fields is of critical interest. We can, therefore, say that legal documents, especially contracts, are notorious for their preponderant use of archaisms which are believed to add some form of formality and seriousness to the contexts where they occur. Archaisms, according to Veretina-Chiriac (2012, p.53), are typical examples of legalisms and lawyerisms belonging to formal style and making the document concise and precise, but unfortunately causing comprehension problems for non-lawyers. There is no doubt that language varieties admit changes frequently, but legal language as a genre is conservative, remaining impervious to change and changing (Hiltunen, 1990, p.17). Crystal & Davy (1969, p.207) point out that "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."

Scholars agree that archaisms are a major vocabulary feature of legal English (Collins, 2005, p.432; Veretina-Chiriac, 2012, p.103; Damova, 2007, p.18; Danet, 1985, p.279; Hiltunen, 1990, p.81). Morpho-syntactic analysis of archaic words shows that some of them are formed from adverbial particles and prepositions. In terms of their structures and morphological features, Crystal & Davy (1969, p. 207) explain that most of these archaic words, which have come down from old English, take the form of adverbials to which some prepositions are affixed. They give the examples of such archaic words as *heretofore*, *therefrom*, *thereof*,

hereinbefore, thereafter, hereinafter, whatsoever, etc. It is also a common form of archaism in legal drafts to have adverbials preceding the verbs they qualify. For instance, it is common to have structures like “we hereby state that...”, “the agreement is herein contained”. Collins (2005, p.432) gives examples of archaisms as “aforementioned”, “pursuant to”, and “witnesseth”. Examples of archaisms given by Veretina-Chiriac (2012, p.104) indicate that archaisms can function as parts of speech other than adverbials: adverb (*hereinafter*), verb (*deraign*), noun (*surrejoinder*), and adjective (*aforesaid*). These words are obscure as they are no longer in regular use in everyday expressions.

So many reasons have been adduced to explain why archaisms are still widely used ~~til~~ today in legal writing. Gibbons (2003, p.41) observes, as claimed by lawyers, that “these archaisms enable clearer and less ambiguous reference and give greater weight and authority to the language”. Hiltunen (1990, p.84) is also of the view that archaisms originate in old English and “may have originally been introduced as ambiguity resolving elements or means of abbreviation”. Archaism is significant to the legal profession in that it helps to show an unbroken tie the profession has with the past so as to lend it some touch of originality and continuity (Oruma, 1983, p.20). Considering the need for archaisms in contracts, Hu and Lu (2017, p.801) observe that “seriousness, formality, accuracy, rigor and logic are the language features of business contract”.

The study shall be guided by the following objectives:

1. determine the frequency of occurrence of archaisms in the selected legal contracts;
2. analyse the structure and meaning of archaisms in the selected legal contracts; and
3. examine why archaisms are used in legal contracts.

Significance of the Study

Language, according to Lewis (2016, p.2), is a dynamic phenomenon. This means that language keeps evolving; as new forms worm their ways into a language, so do old forms fizzle out of currency. However, there is very high incidence of conservatism and formality in legal English. Old words that are no more found in general English, still subsist in legal writing. Consequently, the problem remains whether the technicality of the legal language can be easily understood by laypersons or not, and if not, whether it can be communicated in plain language or not (Chauhaan, 2013, p. 334). This question or concern becomes very relevant in the light of Chauhaan’s (2013, p. 334) view that “the survival and evolution of any language depends on its adaptability and effective understanding”. The layperson (client) on whose behalf legal documents are prepared reserve the right to read and easily understand the legal documents. If he must depend on a lawyer for drafting, and defending the document during a legal battle, must he depend on a lawyer again for the simple interpretation (meaning) of the document? It must be borne in mind that language becomes a useless servant the moment it cannot or does not fulfil its mandate – to communicate. Archaisms can be strange lexical items to non-lawyers, therefore, they may cause comprehension problem. Though studies have been done on legal English, the current study, being very specific in its scope, looks at the use, meaning and structure of archaisms derived from locally sampled contracts within Ondo State, Nigeria.

Theoretical Framework

Register analysis was propounded with a special focus on how the theory can help to explicate the relationship between language function and language use with reference to context of situation. Register analysis is an offshoot of Systemic Functional Grammar, a school of linguistics which is closely associated with the works of M.A.K Halliday in the 60s. The context of register, as defined by SFG is closely related to concepts such as context of situation, context of text, and language variety according to situation. In a register analysis, we analyse, more importantly, the situational characteristics (i.e. who?, what?, where?, when?), linguistic characteristics (i.e. how many features x? How are they used?), and functions (why are they used?) (Biber, 1995). Register analysis is a synthesis of some relevant theories of lexis, register and genre. However, it is more of register as it focuses on professional and occupational varieties of language dictated by the three variables of register. This linguistic theory has an empirical view of language that focuses on its social functions in different contexts. Bozer (2015, p.27) says “a register consists of the exploration of three major components: the situational context where the texts stem from, the linguistic features whose pervasiveness is determined through statistical accounts, and the functional relationship between these two elements.” Atkinson & Biber (1994) delimit the scope and nature of register analysis, and identify four characteristics of studies focussing on the situational variables that dictate the choice of language. However, register analysis is descriptive in nature as it focuses on the analysis of “actually occurring discourse” which aims to “characterise language varieties, and describe language varieties in a formal linguistic way, and to analyse the situational characteristics of these varieties (Atkinson & Biber). This theory pays important attention to the field of discourse. In the words of Whittaker (2010), the following questions are apt while doing register analysis:

what is the activity the participants are carrying out? Or what is the topic of the text?
How much knowledge does the speaker/writer assume the hearer/reader has? ... Do technical terms or jargon make it difficult to understand the language (= exclusion of outsiders)? (p. , p.18)

This aptly captures the need for the use of register analysis as the theoretical framework for this study. Register analysis provides the theoretical underpinning needed for this study as it presents a formal linguistic characterisation of legal English at the lexical level of language analysis. The theory of register thus defines attempt to uncover the general principles which govern how the language we speak or write varies according to the type of situation (Zequan, 2003, p.9). The descriptive nature of Systemic Grammar is inclined to seeking verification of the hypothesis by means of observation from collection of texts, and by means of statistical techniques.

METHODOLOGY

The data for this study were 10 contracts (agreements and deeds) from the Akure Judicial Division of Ondo State, Nigeria. The sampled contracts (hard copies) were scanned and converted to plain texts to make them machine readable. A linguistically modified computer software – Antconc3.2.4w (window) 2011 - was used to count the total number of words, and to sort and categorise the archaisms in the contracts. The paper adopted the ex post facto research method of data gathering because our raw data were derived from already existing

sources, legal contracts, without any form of manipulation. In other words, part of the strategies of ex post facto research method is to find out the cause of certain occurrences or non-occurrences of certain features (Lord, 1973, p.2). This, according to Schmied (1991, p.45), is akin to text-based research method which enables a researcher to collect sufficient spoken or written texts from varieties, fields, domains or situations, and analyse the features in the texts. This procedure provides, not only the raw data, but also guidelines, as far as the frequency and combinations of features are concerned in order to arrive at concrete and verifiable findings. Contracts and agreements belong to the written variety of legal English, which means that their features are consistent, and therefore, “permanent, clearly delineated, and readily available for inspection” (Hughes, 1996, p.4). Since contracts share the above features, this paper sampled a corpus of ten contracts from lawyers within the Akure Judicial Division, of Ondo State, Nigeria, all in 2016. We also adopted corpus linguistic approach to data collection which, in line with McEnery and Hardie (2006, p. 6), quoted in Ewata (2013, p.106), is “an approach or technique of studying a language through sampling.” The sampled data were in serially numbered texts, and presented for further analysis. Quantitative analyses (frequency count and simple percentage) of the highlighted/identified archaisms were first carried out, followed by qualitative or descriptive method of data analysis.

Data Presentation and Analysis

As earlier said, 10 contracts were collected for this study, but owing to the space constraints coupled with the point that the archaisms in the sampled contracts are repetitive, not all the sentences or contexts where the archaisms appear in the 10 contracts are presented here. The data presented below are just to illustrate the occurrence of archaisms in contracts. The raw data, archaisms, are highlighted in the ten serially numbered texts, and presented as follows:

Document 1- Deed of Sub-Lease

- 1.) This SUB-LEASE is made the... day of... between Ondo State Development and Property Corporation...(**herein-after** called the Sub-lessor...and Mr... **herein-after** called the Sub-lessee
- 2.) **WHEREAS** by virtue of and under a Certificate of Occupancy No...
- 3.) THAT the piece of land ...situate lying and being at ... known as...in the ... Local Government Area of Ondo State, together with the rights and appurtenances **thereto** is vested...
- 4.) **WHEREAS** the Sub-lessor has agreed to demise part or portion of the said parcel of land...
- 5.) **WHEREAS** the Sub-lessor with the consent required under the provisions of the Land use Act...
- 6.) Now this deed **witnesseth** as follows...
- 7.) In consideration of the sum of #... paid by the Sub-lessee to the Sub-lessor (the receipt **whereof** the Sub-lessor **hereby** acknowledges) and of the rent and all the covenants/conditions **hereby** reserved...
- 8.) The terms and conditions **hereinafter** contained and on the part of the Sub-lessee to be observed and performed the Sub-lessor **hereby** demises unto the Sub-lessee...

- 9.) ...on survey Plan No... attached **hereto** and which parcel of land is demarcated with survey beacons no... together with/without a dwelling house/out building/yard/garden **thereon, hereinafter** called the demised premises which is held by the Sub-lessor under the **aforesaid** Certificate of Occupancy...
- 10.) The Sub-lessee **hereby** covenants with the Sub-lessor as follows: To pay to the Sub-lessor the said yearly rent on ...**hereby** reserved, without any deduction...
- 11.) ... all fixtures and fittings **thereon** including the sanitary and water apparatus...
- 12.) ... the soil and everything erected **thereon** without any unreasonable delay...
- 13.) To permit the Sub-lessor...to enter upon the demised land and building **thereon** to examine the condition and state of repair **thereof**...
- 14.) ...the Sub-lessee further covenants to repair the same **forthwith**.
- 15.) ...the demised land/premises together with all buildings, fixtures and fittings **thereon**...
- 16.) ...the demised premises as shown by the separate meters belonging **thereto**...
- 17.) Not to alienate the ...demised premises or any part **thereof**...
- 18.) Not to make permit or suffer to be made any alteration in or additions to the buildings **thereon**...
- 19.) To perform and observe all the covenants/conditions affecting the premises **hereby** demised which are contained in the **aforementioned** Certificate of Occupancy and not at any time to do or permit to be done, anything **whereby** such...the purpose of performing **thereon** any of the covenants...which may be necessary to prevent a forfeiture of the **aforementioned** Certificate of Occupancy.
- 20.) Not to do, permit or suffer to be done upon the demised premises or any part **thereof**...or permit to be used the demised premises or any part **thereof** for any noxious...
- 21.) ...in the joint names of the parties **hereto** to the full value **thereof**...such insurance to be **forthwith** laid out in rebuilding...to insure as **aforesaid** the sub-lessor.
- 22.) To erect on the demised premises only and not to cultivate any crop or plant as is likely to breed mosquitoes **therein**.
- 23.) Not to affix any bills, notice boards, placards or advertisement on the premises **hereby** demised except...
- 24.) To pay all existing and future rates...now or **hereinafter** imposed or charged upon the demised premises or any part **thereof** or upon the Sub-lessor or Sub-lessee in respect **thereof**.
- 25.) Provided always and it is **hereby** agreed declared as follows: That if the yearly rent **hereby** reserved or any part **thereof** shall be in arrear for one...it shall be lawful for the

corporation to re-enter upon the demised premises or any part **thereof** in the name of the whole and **thereupon** this demise...the Sub-lessee's covenants **herein** contained...

- 26.) That the Sub-lessor reserves the right to revise the rent **hereby** reserved at any time...
- 27.) ...the several covenants on the part of the Sub-lessee **herein** contained shall peaceably hold...
- 28.) It is **hereby** further provided that at the end of the term **hereby** created,...
- 29.) That for the purpose of clause 2 (h) **hereof** the sub-lessor may refuse to grant...
- 30.) The building to be so erected...must be a completed building suitable for the user **herein-before** agreed...
- 31.) In witness **whereof** the Sub-lessor has caused its common seal to be **hereunto** affixed and the Sub-lessee has **hereunto** set his hand and caused its common seal to be **hereunto** affixed...

Document 2- Deed of Assignment

- 1.) This Deed of Assignment is made between ...**hereinafter** refer to as...and ...**hereinafter** refer to as...
- 2.) **Whereas** by virtue of a deed of sub-lease dated...between... and the assignor **herein**, the assignor... together with the appurtenances **thereto**, **hereby** assigned for legal estate...subject to the covenants and conditions **thereby** reserved and regulated by...
- 3.) ...have agreed with the Assignee for assignment **thereof** of the unexpired interest, less than one day subject only as **aforesaid**...
- 4.) Now this deed **witnesseth** as follows: that the receipt of which sum the Assignor **hereby** acknowledges the Assignor as the beneficial owner **hereby** assigns unto the Assignee the property described in the schedule **hereto** and comprised in and demised by the deed of sub-lease **herein** mentioned...
- 5.) The Assignor **hereby** covenants with the Assignee that he will do anything... regulated by the Land Use Act and the enabling regulations **thereto**.
- 6.) In witness **whereof**, the parties **hereto** have set their hands and seals...

Document 3- Land Purchase Agreement

- 1.) This agreement is made between... **hereinafter** referred to as the Vendor...and ...**hereinafter** referred to as the Purchaser ...
- 2.) **Whereas:** Mrs ... the owner by inheritance of the piece of land ...
- 3.) The Vendor is willing to sell the said piece of land ... with all the appurtenances **thereto** to the Purchaser.
- 4.) Now this agreement **witnesseth** as follows:

- 5.) ...#200,000 now paid to the Vendor the receipt **whereof** the vendor **hereby** acknowledged, the Vendor **hereby** sell and transfer to the Purchaser all rights and interests in the property **hereinbefore** described...
- 6.) Provided always and it is **hereby** further agreed and declared as follows:
- 7.) The Vendor **hereby** promise to confirm the property **herein** sold whenever...
- 8.) The Purchaser shall take possession of the said property and put same to use at the Purchaser's choice **thereon**.
- 9.) ... the Vendor shall immediately refund to the Purchaser the consideration **hereinafter** expressed and the Vendor **hereby** agree to indemnify the Purchaser fully...
- 10.) The Vendor **hereby** agree to do anything whenever called upon to do so...
- 11.) All that half piece of land and the appurtenances **thereto** lying, situate...measuring approximately...together with the appurtenances **thereto** in ...
- 12.) In witness **whereof** the parties **hereto** have set their hands and seals...

Document 4- Transfer of Ownership

- 1.) This agreement is made between ...**hereinafter** referred to as the transferor ...and ...**hereinafter** referred to as the Transferee...
- 2.) **Whereas** the Transferor is the owner of the school **hereinafter** referred to as "the school".
- 3.) #300, 000 only paid by the Transferee to the Transferor the receipt of which sum the Transferor **hereby** acknowledges...
- 4.) It is **hereby** agreed as follows:
- 5.) Each payment to be made **hereunder** shall be made in the presence of...

Document 5- Land Purchase Agreement

- 1.) This agreement made between Mr...**hereinafter** referred to ...and the...**hereinafter** referred to as...
- 2.) **Whereas:** The vendor is the bonafide owner by purchase of the plot of land...
- 3.) ...the receipt of which sum the Vendor hereby acknowledges, the Vendor as beneficial owner **hereby** sells, and transfers...
- 4.) The Vendor **hereby** covenants to do whatever is required of him...
- 5.) The Vendor **hereby** covenants to assist the Purchaser by doing ...
- 6.) ...by payment of not only the Purchase price **herein** but every other cost and or damages arising from and or incidental **thereto**, particularly the Vendor **hereby** covenants that he has obtained all the necessary consent...

7.) In witness **whereof** the parties **hereto** have set their hands and seals...

Document 6- Land Purchase Agreement

- 1.) This agreement made this 18th day of April, 2016, between Mrs...and Chief...**hereinafter** referred to as the Vendors ...AND Mr...**hereinafter** referred to as Purchaser...
- 2.) **Whereas:** Late Mrs... of No. ...Akure was the owner from time immemorial of about twelve acres of land together with the appurtenances **thereto**.
- 3.) Eleven and a half plots together with the appurtenances **thereto** lying, situate, being and known as...
- 4.) In pursuance of the said agreement and in consideration of the sum of eighty thousand naira only now paid by the purchaser to the vendors (the receipt **whereof** the vendor **hereby** acknowledge) the vendors **hereby** sell and transfer to the purchase all the rights and interests in the property **hereinbefore** described to hold the same unto and for the use of the purchaser absolutely, free from all encumbrances.
- 5.) Provided always and it is **hereby** further agreed and declared as follows:
- 6.) The vendors **hereby** promise/undertake to confirm the property **herein** sold whenever the purchaser surveys same in the purchaser's name... the purchaser shall take full possession, occupation and title of the said property and putting same to use at the purchaser's choice **thereon**.
- 7.) ...the vendors shall immediately refund to the purchaser the consideration **hereinbefore** expressed and the vendors **hereby** agree to indemnify the purchaser fully...
- 8.) The vendors **hereby** agree to do anything whenever called upon to so do by the purchaser.
- 9.) All that half piece or parcel of land and the appurtenances **thereto** lying, situate, being...
- 10.) In witness **whereof** the parties **hereto** have set their hands and seals the day and year first above written.

Document 7 - Land Purchase Agreement

- 1.) This agreement made this 26th day February, 2016, between Mr ...**hereinafter** referred to as the vendor... and Mr ... **hereinafter** referred to as...
- 2.) **Whereas:** by virtue of the ...Family Layout receipt issued to the vendor dated...with serial No..., the vendor is the bonafide owner, by purchase, of all that piece or parcel of land together with the appurtenances **thereto** lying, situate and being at ...
- 3.) Now this agreement **witnesseth** as follows: that in pursuance of the said agreement...(the receipt of which sum the vendor **hereby** acknowledges), the vendor as beneficial owner **hereby** sells, and transfers absolutely unto the purchaser all that piece or parcel of land together with the appurtenances **thereto** described above.

- 4.) The vendor **hereby** covenants to do whatever is required of him by the purchaser...
- 5.) The vendor **hereby** covenants to assist the purchaser by doing whatever he is called upon to do...
- 6.) ... he will indemnify the purchaser against any ...by payment of not only the purchase price **herein** but every other costs and/or damages arising from and/or incidental **thereto**, particularly the vendor **hereby** covenants that he has obtained all the necessary consent...
- 7.) In witness **whereof** the parties **hereto** have set their hands and seals the day and year first above written.

Document 8 – Deed of Assignment

- 1.) This assignment is made ...between Oba (Dr.)... **hereinafter** referred to as the vendor... and ... Hospital Services LTD. ...**hereinafter** referred to as the purchaser ...
- 2.) **Whereas** the vendor is the beneficial owner of all that piece and parcel of land ...and **Whereas** the vendor became the owner of the said land upon purchase from the ... Family.
- 3.) In pursuance of this agreement and in consideration of the sum of ...paid by the purchaser to the vendor, the receipt **whereof** the vendor **hereby** acknowledges.
- 4.) It is **hereby** agreed as follows:
- 5.) That the purchaser shall have quiet undisturbed possession of the said property **hereby** transferred and the vendor has done no act in respect of the property **herein** which is adverse or detrimental to the enjoyment of the purchaser.
- 6.) That the vendor shall indemnify the purchaser against any loss, or actions arising out of any defect which renders title to the property **hereinbefore** described void.
- 7.) In witness **whereof**, the parties to these have **hereunto** set their hands and seals the day and year first above mentioned.

Document 9 – Sale of Land Agreement

- 1.) This agreement is made the 3rd day of February, 2016 between Mr.... **hereinafter** referred to as the vendor... and Pastor (Mrs)... **hereinafter** referred to as the purchaser...
- 2.) **Whereas:** The vendor is the beneficial owner of all that piece and parcel of land...
- 3.) **And whereas:** The property was sold to the vendor by Mr...and Mr... who were the administrator to the property **hereinbefore** described having inherited same from Chief...
- 4.) **And Whereas:** By virtue of a letter of allocation dated 3rd March, 1983 issued by the..., the said Mrs... was allocated the property **hereinbefore** described.

- 5.) And **Whereas**: The vendor is desirous of surrendering the unexpired residue to the purchaser...
- 6.) In consideration of the sum of ...paid by the purchaser to the vendor, the receipt **whereof** the vendor **hereby** acknowledges...
- 7.) The vendor **hereby** covenants that the property being sold is free from all encumbrances...
- 8.) **Whereof** the parties **hereunto** set their hands and seals the day and year first above mentioned.

Document 10 – Deed of Assignment

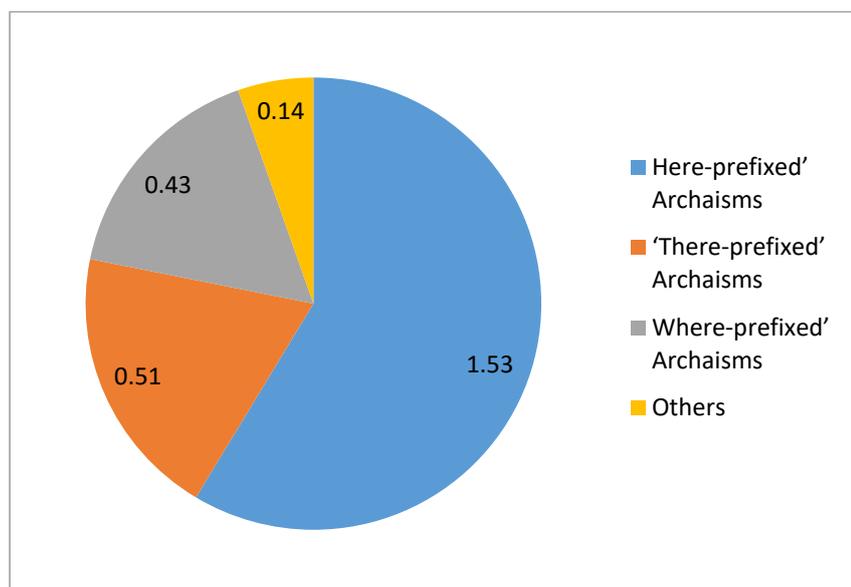
- 1.) This deed of assignment is made ...between Mr...**hereinafter** called the assignor... and Mr... **hereinafter** called the assignee...
- 2.) **Whereas** By deed of statutory right of occupancy dated...on and over the land more particularly described **hereinafter** of all that piece and parcel of land ... which are set out in the said schedule **hereto**
- 3.) ... the assignor became the beneficial owner of the said property together with the structures **thereon** situate, lying being and known as...
- 4.) And **Whereas** The assignor is desirous of assigning the unexpired residue to the assignee.
- 5.) That in consideration of the sum of ...only now paid by the assignee to the assignor the receipt **whereof** the assignor **hereby** acknowledges.
- 6.) The assignor **hereby** assigns the unexpired residue in the property subject to the terms and conditions **hereinafter** mentioned.
- 7.) The assignor **hereby** covenants that the title is free from all encumbrances.
- 8.) **Whereof** the parties **hereunto** set their hands and seals the day and year first above mentioned.

DISCUSSION

The following 20 archaic words are used 187 times in the 10 sampled texts of about 7116 words: *thereon, thereupon, therein, thereto, thereof, thereby, hereafter, hereinafter, hereinbefore, hereby, hereto, herein, hereof, whereby, whereof, whereas, forthwith, witnesseth, aforementioned, and aforesaid*. These archaisms used in the texts are in three major categories in terms of their morphological structures: 1.) here-prefixed archaisms, e.g. *hereto* and *hereof*, 2.) there-prefixed archaisms, e.g. *thereupon* and *thereof*, and 3.) where-prefixed archaisms, e.g. *whereof* and *whereas*. Apart from these three major categories, we still have some archaic words in the texts that do not have any predictable prefix: *forthwith, aforesaid, aforementioned, and witnesseth*. This is the fourth category.

Number and Frequency of Occurrence of Archaisms in the 10 Sampled Contracts

Types	NO	Frequency of Occurrence	Percentage
'here-prefixed' archaisms	7	109	1.53 %
'there-prefixed' archaisms	6	37	0.51%
'where-prefixed' archaisms	3	31	0.43 %
Others	4	10	0.14%
Total	20	187	2.6%



Pie chat showing analysis of frequency of occurrence in ranking

The study investigated the use of archaisms in 10 contracts. With electronic counting, there were 7116 words in the 10 sampled texts. The frequency of occurrence of the 20 identified archaisms in the 7116-word contracts was 187, distributed as follows: 7 'here-prefixed' archaisms occurring 109 times, representing 1.53%, 6 'there-prefixed' archaisms occurring 37 times representing 0.51%, 3 'where-prefixed' archaisms occurring 31 times representing 0.43%, and, 4 in the other (last) category occurring 10 times, representing 0.14%. This means that the *here-prefixed archaisms* are the most commonly used archaisms in contracts, followed by the *there prefixed archaisms*, then the *where-prefixed archaisms*, and lastly, the other category which is not so much in use in comparison with others.

Crystal and Davy (1969, p.207) say archaisms take the form of adverbials to which some prepositions are affixed. Generally, archaism is used in legal contract to modify verbs or nouns. They are usually placed behind the verb or noun they modify (Hu and Lu 2017, p.4). The morpho-semantic analysis of archaisms reveals that the prefixes, *here-*, *there-*, and *where-*, have a lot to do in determining the meaning of the archaic words. For instance, basically, *hereinafter* and *hereafter* mean 'after this' as used in the texts, and are similar and interchangeable in their use. The prefix *here-*, an adverb of place, indicates 'this place' against 'that place' in the case of *thereafter*.

Furthermore, *hereunder*, which means under this clause, can be replaced with *hereafter* as used in the texts (check Doc. 4, No. 5). *Herein* as used in the texts, means 'in this place, passage, or document' (See Doc. 2, no 5 & Doc. 3 no 7).

We can also see the use of archaisms that start with *there* in the texts. For example, *thereof* as used in Doc. 1, no 10 and 11 indicate ‘of the thing that has been mentioned or said before’, or ‘of that or it’. *Thereon* means ‘upon it’ or ‘that is or are there’ (see Doc. 1, no 8 & 10).

There are also archaisms that begin with *where* in the texts. An example is *whereof* which can generally mean ‘with or by which’, ‘of what’, ‘of which’, or ‘of whom’. However, as used in this text, it means ‘of which’ (see Doc. 3, no 12 & Doc. 3, no 6). *Whereas* is commonly used to introduce conditionality or premises for further action, in serially numbered paragraphs in contracts (see Doc. 3, no 2 & Doc.4, no 2). As used in these documents, *whereas* means or indicates ‘in view of the point that’ or ‘considering that’.

Other archaic words used in these texts and their meanings are presented as follows:

Archaisms	Meaning
thereto	to that or it, to that place, thing, matter, circumstance
thereby	by that means, as a result of that, in that connection
wherein	in what or in which, in what way, place or respect
whereby	by which, by which way or method
hereby	by means of this, by this medium
hereto	to this document, subject
hereinbefore	in the preceding part of this document, text
hereunto	in this document
witnesseth (old spelling)	Witness
forthwith	at once, immediately, without delay
aforementioned	that was earlier mentioned, mentioned above
aforesaid	that was earlier said

Summary of Findings

In response to the set objectives, the findings reveal that archaisms are still very much in use in legal English. Although the 2.6% of the frequency of occurrence of archaisms in the sampled legal documents is low, this study has established the fact that archaisms, which are ordinarily not supposed to be found in current English usage any longer, are still being preponderantly used in legal English.

It is also revealed through our descriptive analysis of the morphological structure of the archaisms found in this study that a greater percentage of archaisms, in consonance with the view of Crystal and Davy (1969, p.207), take the form of adverbials to which some prepositions are affixed. However, it is further proven that some other forms of (irregular) archaisms, such as “aforementioned”, “aforesaid”, and “witnesseth”, as earlier observed by Collins (2005, p.432), do exist and, according to Veretina-Chiriatic (2012, p.104), such irregular archaisms belong to other word classes apart from adverbial. For instance, “aforementioned” and “aforesaid” are adjectives, while “witnesseth” is a verb. The meaning of archaic words may be strange to non-lawyers because the words are not used in everyday English. More importantly, our descriptive analysis of the archaic words and their meaning reveals that the morphological formation of some archaic words can tell their meaning or make their meaning predictable, while the meaning of some others cannot be guessed from their morphological structure. For

instance, “hereafter” and “hereby”, which mean “after this place” and “by this means” respectively, may be easy to understand on the basis of their formation. But some other archaisms such as “forthwith” and “aforementioned”, which mean “at once or immediately” and “that has been mentioned before or above” respectively, may not easily yield their meaning to any mind not trained in law.

It is also found out in this study that archaism reduces wordiness and redundancy. For instance, when a lawyer uses a single word such as “aforementioned” instead of the longer expression “that has been mentioned before or above”, it saves space, time and, guides against wordiness. This is in line with the views of Tiersma (1999, p.94) who says that “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’ ”

CONCLUSION

In conclusion, it can be seen that archaisms are still found in legal documents, especially, contracts. And archaisms, which originate from old English period, as often claimed by lawyers, help to resolve ambiguity, promote clearer expression, and give greater weight and authority to the language (Hiltunen, 1990, p.84, and Gibbons, 2003, p.41). Furthermore, archaisms add to the degree of formality, seriousness, accuracy, and precision of legal English (Hu and Lu, 2017, p.801). Their use brings about tie in the sentence internal features, and cohesion between the sentences and paragraphs in order to link them together efficiently. When one understands the morphology of adverbial archaisms such as the ones analysed in this study, it becomes easier to understand the legal contracts, and it will further facilitate enforcement of and compliance with contractual agreements between parties. However, as efficient as archaic words may be to accurately capture the lawyers’ intended meaning, can we continue to sustain their use in legal writing despite the fact that they are no more in general use? Tiersma (1999, p. 9) says “a common criticism of this legal vocabulary is that it is full of antiquated features. Although these expressions often had a legitimate function in the past, the claim that archaic words or expressions should be preserved because they are somehow more precise than ordinary language is simply not defensible”. This study, therefore, suggests that, on the basis of the fact that archaisms can cause comprehension problems for non-lawyers because they have become unfamiliar words in modern English usage, except in law, they can be replaced with modern words in compliance with the drive towards plain English in legal writing (Tiersma, 2007). A well-balanced assessment of language and communication in legal discourse reveals that plain or modern English can efficiently serve both lawyers’ and their clients’ (communication) needs. Bearing in mind that communication is in the heart of language, legal language should communicate to the laypersons too, and should not be the exclusive preserve of the ‘learned’.

Implications of the Study

This study basically shows that when laypersons are able to understand the morphological structures of adverbial archaisms, they will, to a very large extent, understand the archaic words. By extension, when clients understand the archaic words (which are key words in the contracts), it becomes easier for them to understand and comply with the contractual agreement. The sense in this submission is that, pending when lawyers will fully embrace the

use of plain English in place of the foreign and archaic words, laypersons cannot afford to remain helpless in the dark.

As earlier suggested in this study that archaic words need be replaced with modern and familiar words, an area of concern is how well can modern words fit appropriately into the contexts where archaisms are used, bearing in mind that archaisms aid precision and accuracy of meaning? Can we get modern one-word replacements, or definitions? For want of one word replacements, will definitions not further cause verbosity and wordiness which can create more problems than solutions? Will legal documents not be compromised if the language is not tight and accurate enough? It is hoped that this study will act as a springboard to further researches not only in providing answers to the above unresolved questions raised in this study, but also in general area of legal language and communication. These are questions for, or areas of, further research.

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