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A Syntactic and Pragmatic Analysis of Cross-Examination in Ghanaian Law Courts

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Abstract
This paper looks at the use of language in the law court - the high courts of the central region of Ghana. It investigates cross- examination questions and the syntax of such questions posed by lawyers to solicit information. It takes a look at the nature of questions the lawyers ask witnesses in order to get the needed information so as to make their case. An interesting finding is that the nature of questions asked by the lawyers in the law court usually deviate from the normal Wh question type. The lawyers rather resort to statements and imperatives to solicit information from their witnesses. Such questions were observed to be intimidating and most often made the witness confused. This study is therefore an exploration of the type of questions posed by lawyers in the court of law. The general observation is that a witness who is not strong and well coached by his lawyer may get confused by such intimidating nature of cross examination.
Keywords: cross-examination, witness, Ghana, law court

1. Introduction

This paper seeks to examine the syntax and pragmatics of cross-examination of Ghanaian law courts. In recent times, in Ghana, there have been instances of people convicted falsely while others who are guilty are left uncondemned, but not much studies seem to be undertaken in this area.

It is against this background that this paper takes a look at the use of language in court proceedings especially cross examination in Ghanaian law courts with regard to syntax and pragmatics.

It is in cross-examination that the theory and theme lines become most visible to the jurors. The thrust of the cross- examination is to support the theory of the case. But in cross-examination, the cross-examiners also encounter the best opportunities to ingrain theme lines. It is in cross- examination that the lawyer can cause opposing witnesses to affirm the cross-examiner's theme lines. The Ghanaian law system relies on witnesses, just like other law systems in the western world.

The purpose of any aspect of a trial is to persuade. Persuasion of the trier of the facts is the only ultimate goal of cross-examination. If cross-examination is not attaining that goal, it is a waste (Coluccio, 2009).

Too often lawyers set a goal of destroying the witness and end up with an ineffectual cross-examination, or a cross- examination that is disastrous.

Our culture believes that the truth is best found if trial testimony is subject to a searching inquiry by the opposing counsel. Cross-examination techniques exist to ferret out facts that may have been omitted, confused, or overstated (Coluccio, 2009). The necessity of testing by cross-examination the "truth" of direct examination is an essential portion of the trial. It is beyond any doubt the greatest legal engine ever invented for the discovery of truth. The fundamental importance of cross-examination was recognized by the Founding Fathers of the United States of America, when they incorporated it into the confrontation clause of the Sixth Amendment of the United States Constitution.

In cross examination there are facts to be introduced, points to be made, theories to be supported, and opponent theories to be undermined. Cross- examination is a science. It has firmly established rules, guidelines, identifiable techniques, and definable methods, all acting to increase the cross-examiner's ability to prevail. But it is also an art, and experience more than anything, helps develop the artistic components of cross-examination.

In direct examination, the trial lawyer is working with a witness rehearsed by the lawyer and who ordinarily agrees with the lawyer's goals. The cross-examiner controls all aspects of questions asked. The cross-examiner controls the number of questions asked and the speed with which the questions are put to the witness. The cross-examiner may compel the witness to move about the courtroom by referring to demonstrative aids. The cross-examiner may compel the witness to remain seated. In fact, it is in cross-examination power dimension is seen at its best display between the examining lawyer and the witness or defendant and here reference is made to (Fairclough, 2001). It may be fair to say that this is the phase of the trial in which the advocate is freest in the courtroom.

This paper therefore explores the use of language in cross-examination as language is the tool for conveying information. The technical, written, and power laden nature of legal language makes the language of the law notoriously impenetrable for non-lawyers. The situation is even worse for those who have a low proficiency in the language of the legal process (Gibbons, 1999).

Laws are coded in language, and the processes of the law are mediated through language. The language of the law is therefore of genuine importance, particularly for people concerned with addressing language issues

and problems in the real world - that is, Applied Linguists.

The paper seeks to find out how language is used by lawyers in Ghanaian law courts in such delicate matters as cross-examination with regard to syntax and pragmatics.

2. Conceptual Analysis

It is important to situate this study in the body of knowledge informed by the conceptual framework of syntax and pragmatics.

The study of language is often divided into semantics, syntactics and pragmatics.

2.1 Syntax

The word "syntax" comes originally from Greek and literally means "a putting together" or arrangement." (Yule, 2010). Syntax is the collection of rules that govern how words are assembled into meaningful sentences. While these are useful distinctions in the study of language, language use in the real world is fluid and always changing. A reasonable understanding of the evolution of language is that syntax developed slowly from minimally-syntactical utterances. Syntax links names and actions as a simulation of the order of events in the real world. Syntax is the basis of verbal reasoning. Syntax has developed differently in different languages.

Increasing complexity of sentences accommodates an increasing need for more detailed communications. Syntax provides selective advantage to humans who faced variable and complex demands and who made more flexible and complex statements to each other to cope with survival challenges.

Syntax is the form of language that admits any content. The content may be literal or factual. The content may be an invention, a fictional story that gains credibility by being inserted into proper syntax. Humans are confused or alarmed by improper syntax, but will often accept fabricated contents with little resistance or with demonstrable appreciation. You could argue that there are two main uses of language: one is to inform; the other is to deceive.

This work only looks at syntax from the way the language of cross-examination is structured in the Ghanaian law courts but not from the point of view of what structures are permissible and which are not in the language of the lawyers as Huddleston (1986) has pointed out, within the sentence we have a much sharper distinction between permissible and impermissible combinations, which enable us to formulate rules distinguishing what is grammatical from what is not.

According to Hodge and Kress (1993), syntax is meaning. Syntax carries meaning in the same kind of way as other signifiers of language. So the meanings of syntax are social and ideological depending on the factors that constrain other signifiers: different codes, different situations, different participants, different histories.

The meanings carried by syntax are pervasive and important in every kind of text. So some level of syntactic analysis in cross-examination is indispensable.

2.2 Pragmatics

Pragmatics on the other hand is the study of how language is used and how the different uses of language determine semantics and syntactics. Pragmatics is a systematic way of explaining language use in context. It seeks to explain aspects of meaning which cannot be found in the plain sense of words or structures, as explained by semantics. As a field of language study, pragmatics is fairly new. Its origins lie in philosophy of language and the American philosophical school of pragmatism. As a discipline within language science, its roots lie in the work of (Herbert) Paul Grice on conversational implicature and the cooperative principle, and on the work of Stephen Levinson, Penelope Brown and Geoff Leech on politeness.

Van Dijk (1977) cited in (Garcia, 2004) proposed a theory of pragmatic comprehension made up of two main processes: context analysis and utterance analysis. In context analysis, language users analyze the meaning of an utterance based on the context in which it was uttered by using background knowledge, past experiences, and knowledge of social rules. They also apply their own expectations of plausible goals of the speaker and expectation of the kinds of utterances that are likely to take place in that particular context. They decide which information to focus attention on

This paper is about language pragmatics, about how humans use language to achieve their goals, in this case lawyers in the law court.

Language is a form of communication. Humans live and work in groups that require sound communication, sharing information, broadcasting warnings, forming and maintaining relationships (Yule, 2010).

Language pragmatics can take several forms under several headings such as stories, gossip, myths, polite talk, humor, literature and news.

Pragmatic meaning requires the listener to understand not only linguistic information, such as vocabulary and syntax, but also contextual information, such as the role and status of the interlocutor (Rost, 2002).

3. Methodology

The study is mainly a textual analysis of cross examination questions posed in the high courts of Ghana - Agona Swedru and Winneba high courts based in the central region.

Data was collected by recording and transcribing. A total of twenty cases were recorded under different issues: nine land cases, two property (house) cases, four divorce cases, three chieftaincy cases, and two theft cases.

A total of 200 cross-examination questions were generated from the selected cases; land dispute cases which are represented in the data as (L.C), divorce cases as (D.C), stool(chieftaincy) cases as (S.T) and property cases as (P.C). All are presented in the data with the dates in which they are collected in brackets.

4. Analysis and Discussion

From the data, several question types were recorded based on their syntactic structures. They are analzed as follows:

Table. Frequency of Occurrence of Question Types

Question Type	Total Number of Occurrence	Example
Leading Questions	94	Were you at Nana Amponas's house on the night of October 20? (St. C 1, 13-2-2015)
Confirmatory Questions	50	You don't know any daughter called Naomi?(P. C 2 -3-2015)
Demonstratives Beginning Questions	19	This woman, sitting here, is the same woman you presented tirinsah (customary drinks) for her hand in marriage in the year 1999. (D.C.1, 26-2-15)
Imperatives	32	Will you tell the court the position you hold in the family? (L. C 2, 5- 3-2015)
Wh Questions	5	Who keeps the key to the stool room? (St. C. 2-2-2015)
Total	**200**	

Based on the frequencies revealed in the data as a whole, some interesting statements can be made on the occurrence of the question types in the cross-examination cases. As we can see from the table, there are significant frequency differences in the use of these question forms. While leading questions appear to be the most frequently used forms in cross-examination, accounting for 96 times of the total occurrences, the 'wh' question type has the least occurrence, appearing only 5 times in the data. This unequal representation has certain implications which are looked at in more detail as follows:

4.1 Leading question or suggestive interrogation

From the data, this type of question starts with auxiliaries which are inverted with their subjects meant to interrogate. They suggest the particular answer or response contained in the information the examiner is looking to have confirmed as van Dijk (2006) puts it, manipulators use discourse to make others act not in their own interest but in the interest of the manipulators.

For example this question from the data is leading:

- *Were you at Nana Amponas's house on the night of October 20?* (St. C1, 13-2-2015)

This suggests what location the witness visited on the night in question. The same question in a non-leading form would be:

- *Where were you on the night of October 20?(St. C1, 13-2-2015)*

When the auxiliary is inverted with its subject in the interrogative, the cross-examiner tries to elicit the particular information he is looking for. Other examples from the data include:

You recollect that you and the petitioner were staying in a single rented room before you decided to build a house number WR1432 at Winneba Junction? (Dv. C1, 2-26-2015)

Were you on the land on the 20th of March? (L. C3 20-4-1015)

Leading questions name a particular person, place or thing rather than asking "who, what, where?" The cross examiner does this to caution the witness that he has evidence concerning the case.

It is clear from the data that the propriety of the leading questions generally depends on the relationship of the witness to the party conducting the examination. An examiner generally asks leading questions to elicit testimony of a hostile witness who is reluctant to volunteer information.

Eades (2008) has it that factors such as feeling of intimidation play an important part in the elicitation of responses from witnesses by the use of leading questions in the cross-examination of Aboriginal witnesses. The use of leading questions as observed in the data is therefore seen as a deliberate attempt by the examining lawyers to intimidate and get witnesses confused as this leads to their benefit. From our observation, this does

not always lead to a healthy cross-examination but disastrous consequences where the witness reacts to safe his face rather than giving information.

4.2 Wh questions

Wh questions are in the minority in the data. It was observed that when the "wh" question types are used such as:

- Where were you on the night of October 20?
- Who gave you the land?
- What are the boundaries of the land?

These questions do not suggest to the witness the answer the examiner hopes to elicit.

These are open questions and do not restrict the witness to some specific answers. And here the witness is at liberty to provide any answer. It was observed that the cross-examining lawyers tried as much as possible to avoid this question type. In cross-examination the examiner tries to have some facts confirmed Dijk (2006) and so they try to avoid wh- question type and resort to lead questions which will push witnesses to give answers that will confirm their theme lines

4.3 Confirmatory questioning

The data abounds in declaratives meant to interrogate and I call them confirmatory questions.

Some examples from the data include:

You don't know any daughter called Naomi?

I put it to you that your uncle, Gyensah's daughter is called Naomi

You waited for the mother and father to die before bringing the case against them because now they are helpless.

You are not entitled to your claim in this court.

You are not.

Here the interrogator only seeks to support a certain point. The examiner therefore forces the person to accept his facts.

In this type of cross examination, there are elements of attack as is seen in the declaratives above from the data. This attack is more evident in the declarative "*you are not entitled to your claims in this court"* and reinforced *by "you are not"*.

This goes to confirm the definition of social power by van Dijk (2006) as control exercised by one group or organization or its members over the actions and/or minds of the members of another group.

Cross examination, according to Lipson (2008: 1), involves "the ability to stare an enemy litigant in the eye with the understanding that you are going to take control of his mind and speech". Cross-examinations tend to be sites where subtle construal of judgement and questions are used as strategic instruments of domination and testimony management. In cross-examination, interaction is generally unsympathetic, non-compromising, non-cooperative, and coercive.

An ideal cross examination according to (Coluccio, 2009) has it that fundamentally, cross-examination is an opportunity to elicit favorable facts as opposed to simply attacking unfavorable testimony. The object is to score on the factual points. To make witness devastation a goal is to place the ego needs of a cross-examiner over the factual needs of the case. The above example cited in the Ghanaian situation is a clear demonstration of witness devastation by the examining lawyer.

Cross-examination should therefore be used as an opportunity to build or teach your case and thus, persuade the trier of facts and not to devastate others.

4.4 Demonstratives beginning questions

The use of demonstrative adjectives also abound in the data; *this*, *these*, *those*

This land you described, *do you have any document regarding the land to show you are the owner? (L.C. 1, 15-2-2015)*

These leaders you mentioned,…were they the first settlers? (L. C. 2, 17-2-2015)

This woman, sitting here, is the same woman you presented tirinsah (customary drinks) for her hand in marriage in the year 1999. (D.C.1, 26-2-15)

We see the above examples from the data as transliteration based on the linguistic background of the cross-examiners. Most Ghanaian language speakers prefix their utterances with demonstratives when they believe they have the facts concerning the issues at stake. When this syntactic structure is adopted, the expectation of the cross-examiner is that the witness will admit a fact helpful to the cross- examining lawyer. From the enquiries above the lawyers try to cause the opposing witnesses to affirm their theme lines and require a "yes" or "no" answers to such theme lines.

4.5 The use of imperatives

We also identified some uses of imperatives, most of which begun with modal auxiliaries such as *will* and *could*

while others started with the lexical verb *tell*
The following illustrate the point:
Will you tell the court the position you hold in the family? (L. C2, 5- 3-2015)
Will you tell the court the person who held the key to the stool room before you? (St. C., 19-3-2015)
Tell the court the year you visited these hospitals! (D. C2, 2- 4-2015)
By phrasing questions in such a way, the witness gets intimidated and confused.

When a witness is attacked he looks at every question with suspicion trying to find ways to counter it. The witness will usually become defensive as a mechanism to this attack.

Halliday (1985), cited in Fairclough (2001), asserts that the oppressed can re- appropriate acts of oppression and dominance by employing what he calls anti-language, a kind of oppositional language that is used as a conscious alternative to the dominant or established discourse types. These types of questions also abounded in the cross-examinations that were recorded. It was observed that when such questions were posed, witnesses saw them as offensive and more often than not adopted defensive mechanisms, giving sarcastic responses to safe their face.

Cross-examination can be both constructive and destructive. The constructive element of cross-examination is the use of the opponent's witnesses to build the advocate's theory of the case through persuasion. (coluccios, 2009). When the examination is not done persuasively, then it becomes destructive.

The purpose of any aspect of a trial is to persuade (Ibid). Persuasion of the trier of the facts is the only ultimate goal of cross-examination. If cross-examination is not attaining that goal as in some of the cases in the Ghanaian situation, it is a waste. Too often lawyers set a goal of destroying the witness and end up with an ineffectual cross-examination, or a cross- examination that is disastrous.

Cross-examination is not an exercise based on emotion, presence, and oratory which unfortunately is the case in the Ghanaian situation as seen in some of the examples of the data as in*, you are not entitled to your claim in this court, you are not.* Here, the cross-examiner as it were assumes the position of the judge to pass judgment, which should not be the case.

It is not the cross-examiner showing the witness and all of those who observe, that the cross-examiner is smarter, quicker, louder, more demonstrative or more fearsome. It is about the cross examiner's ability to get factual evidence to support judgment (Casel 2012).

(Coluccio,2009) has it that, too many cross- examiners view the cross-examination as pitting his/her skills, preparation, intelligence, and techniques against those of the witness. Instances of this nature from the data include:
In Ewutu, you celebrate an annual festival, what do you call it?
Was it celebrated in the year 2012? (St. C2, 19-4-2015)
Was it celebrated papa? (St.C2, 19-4-2015)
As you sit here, what is your net income? (D. C2, 19-4-2015)

In a larger sense, cross-examinations are not about a performance by an advocate, but rather the teaching of facts that are critical to the cross-examiner's theory of the case. When the lawyer realizes that a cross-examination teaches the cross-examiner's theory of the case, pressure is reduced. The focus is shifted from the cross-examiner's ego to the cross-examiner's ability to convey to the listeners the logic behind the cross-examiner's theory of the case.

5. Conclusion

It was observed that the WH- type will lead to subjective answers by the witness but the cross examiners' aim is to elicit some facts from the testimony of the witness to make his case.

When a cross examiner realizes that the opposing counsel's witness is reluctant (hostile) in providing the necessary information he is looking for, then he resorts to the use of leading questions. It was observed that such questions dominated the study which normally began with auxiliaries. When the auxiliary is inverted in the interrogative the cross examiner tries to elicit particular information he is looking for. Such leading questions were intimidating and often very offensive as also observed earlier by Eades (2008).

It was also observed that statements used as interrogatives dominated in the data collected. These statements meant to question were not followed by any tag question which is the correct grammatical form that would have made them clearer enough as questions. It was further observed that modals, such as *could*, *would,* which in their natural state are meant to hedge were used as imperatives to extract information from witnesses. Such usages were mostly seen as attacks on the witness. When this happens the witness usually becomes defensive as a mechanism to the attack. That is why Halliday (1985), cited in Fairclough (2001), asserts that the oppressed can re- appropriate acts of oppression and dominance by employing what he calls anti-language, a kind of oppositional language as way of defending themselves.

In the words of (coluccios, 2009), cross-examination can be both constructive and destructive. The constructive element of cross- examination is the use of the opponent's witnesses to build the advocate's theory

of the case through persuasion and not intimidation.

Finally, it was experiential that cultural influence played a major role in the study. Instances noted were the use of demonstratives to start the interrogatives (*These your ancestors, did they have any leader?)*. This deviates from normal question types and we see such instances as cases of transliteration based on the linguistic background of the cross-examiners.

Definition of Terms

St C –Stool Case
P C –Property Case
D C- Divorce Case
LC- Land Case

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