# Linguistic Analysis of Trading Agreements: Insights for Plain Writing in Philippine Contracts

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## Abstract

A Philippine bill has been put forward with the view to simplify legal documents, a timely initiative in the advent of the ASEAN Economic Community in 2015, which portends heightened importance of business contracts. In consonance with the global effort to apply plain writing, this paper examines four linguistic features of five online trading agreements. Using corpus stylistics and informed by principles of pragmatics and readability, the analysis confirms that the examined trading agreements possess the traditional legal form characterized by the use of impersonal noun references; modal verbs, particularly *shall*; legal archaisms; and long sentences. While the Plain Writing for Public Service Act of 2013 is pending ratification, it appears that stock broker companies in the Philippines have already begun with their efforts to simplify their consumer contracts. Benchmarking on USA Plain English Laws, the study also proposes some guidelines to make trading agreements objectively comprehensible to nonspecialist users.

Keywords: Plain writing, linguistic features of contracts

## 1.     Introduction

The imminent implementation of the ASEAN Economic Community (AEC) in 2015 presents potential prospects for economic growth among its member countries. To realize its vision of full integration into the global economy, one of its priority initiatives is developing electronic transactions through e-ASEAN (The ASEAN Secretariat, 2014). This report portends the expansion of Information and Communication Technology (ICT) in relation to ASEAN market integration, which broadly encompasses online trading in securities, an investment activity that has been opened to the Philippine market, albeit less pervasive in comparison with the stock market activity of other nations (Dayag, Lagamayo, Lim, Miranda, & Syson, 2014). Such projection suggests the increased importance of online trading agreements as legal financial contracts that legitimize trading of securities via the Internet by individual investors. Consequently, making such contracts more reader-friendly to consumers becomes an urgent matter compelling law practitioners to apply standards of Plain English to cater to clients of different levels of literacy.

An online trading agreement is an example of a legal document that is often described as complex and unintelligible, particularly to a lay person with no formal training in the language of law (Holt & Johnson, 2010). The complexity of such a document is attributed to the linguistic features that characterize its form and structure. Coulthard and Johnson (2010) listed 12 linguistic features of contracts, including binomial expressions, cohesion, complex prepositions, impersonal noun phrase, legal archaisms, modality, negation, nominalization, passive constructions, sentence length, and specialized legal lexis. Tiersma (2012) identifies these features as impediments to effective communication of important legal and financial information to nonexpert users or nonlawyers.

To address this linguistic barrier, concerned legislators turn to the Plain English movement that started in 1979 as an effort to minimize, if not remove, legalese and bureaucratic language (Stoop & Churr, 2013). Leading this initiative, the United States of America has enacted the Plain Writing Act of 2010, also known as United States Public Law 111-274, which mandates federal agencies to produce legal documents that are "clear, concise, well-organized, and

follow other best practices appropriate to the subject or field and intended audience" (U.S. Securities and Exchange Commission, 2014, n.p.). This law has served as the benchmark for other countries that likewise acknowledge the merits of using words economically to communicate critical information. In New Zealand, companies that strictly adhere to Plain English standards are recognized in the WriteMark Plain English Awards (Dickens, 2014). Hong Kong, United Kingdom, and Australia have also come up with guidelines for creating clear product disclosure and initiatives to enhance the general financial literacy of investors (Godwin, 2009). Meanwhile, in the Philippines, Senator Grace Poe authored the Plain Writing for Public Service Act of 2013, a bill that is largely based on the U.S. Plain Writing Act of 2010 in recognition of its benefits to the public (Poe, 2013). While the bill is still pending ratification, the Philippines is already recognized as one of the nearly 800 member countries of the Plain Language Association International, an organization that actively endorses the use of plain language, particularly in the context of legal discourse (Plain Language Association International, 2009).

Assessing the readability of texts has been a research interest since the 1920s when readability formulas were first developed to quantify elements of writing such as average number of syllables in words and average number of words in sentences to determine how easily the text can be comprehended (Rajapakse & Rameezdeen, 2007). Advancement in computerized grammar and style-checking software programs and web tools has helped popularize readability formulas, including Flesch Reading Ease Scores (FRES) and Flesch-Kincaid Grade Level; all of which measure surface features of the text and typically assign school grade level based on the perceived text difficulty. The Flesch benchmark considers '65' as "the Plain English Score"; this means a text that can be comprehended by 8th and 9th graders is the norm for plain writing standards (Ross & Scott, 1996, as cited in Rajapakse & Rameezdeen, 2007). However, a critical limitation of these formulas is their inability to account for qualitative considerations, such as the reader's prior knowledge of and interest in the subject matter of the material. Researchers agree that these factors contribute significantly to the assessment of the comprehensibility of the text since the final assessment rests on the intended audience (Schriver,

1989, as cited in Pitler & Nenkova, 2008; Zakaluk & Samuels, 1988 as cited in Rajapakse & Rameezdeen, 2007). Notwithstanding these restrictions, numerical descriptions of text features provide an opportunity to evaluate text comprehensibility in an objective manner.

In consonance with the prevailing effort to simplify legal documents, this paper examines four linguistic features of online trading agreements in the Philippines where, similar to Chauhaan's (2013) observation in India, English appears to be the main language of law, particularly in written discourse even if it is "not the language of the common man" (p. 333). Specifically, the study attempts to answer the following questions:

1. What are the lexical and syntactic traits of the selected online trading agreements in terms of impersonal references, modal verbs, legal archaisms, and sentence length?
2. What indications, if any, of plain writing standards are manifested in the corpus?
3. What language guidelines can be recommended to make the contracts more comprehensible to nonlawyer investors?

## 2.    Method

This study applied corpus stylistics in analyzing four linguistic features of five online securities trading agreements. Corpus stylistics studies the relative frequency of particular linguistic items and uses quantitative data to draw conclusions about the language features that characterize a particular text type and the possible influences on readers' perceptions (Carter, 2010; Craig, 2004). The linguistic features examined were selected based on the framework of Coulthard and Johnson (2010). The original inventory of 12 linguistic features was narrowed down to four—impersonal and personal references, modal verbs, legal archaisms, and sentence length. These four surface features of contracts were selected on the basis of their quantifiability using word count tools that are readily accessible on the Internet. As such, the procedure can easily be replicated as a simple test of readability, albeit nonconclusive. The decision to include three lexical features (pronoun use, modality, legal archaisms) and one syntactic feature (sentence length) was also anchored on Pitler and Nenkova's (2008) assertion that combining lexical,

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**Table 1. Corpora source**

| Corpus | Online Stock Broker | Website |
|---|---|---|
| 1 | AB Capital Securities, Inc. | http://www.abcapitalsecurities.com.ph/ |
| 2 | Abacus Securities Corporation | http://www.abacusonline.com.ph/ |
| 3 | Accord Capital Equities Corporation | http://www.philstocks.ph/ |
| 4 | Col Financial (formerly CitiSecurities, Inc.) | http://www.colfinancial.com/ |
| 5 | First Metro Securities Brokerage Corporation | http://www.firstmetrosec.com.ph/ |

syntactic, and discourse features strengthens the predictability of how readable a given text is.

The chosen lexical and syntactic features were quantified using www.wordcounttools.com, a web tool that reports word count statistics, including average sentence length and keyword density of the top 500 frequently used words in the corpus. Manual tagging and the "Find" function of Microsoft Word were also used to determine the frequency of noun-phrase impersonal references, legal archaic expressions, and the pronoun *I* in the corpora. These supplementary methods were applied to address the limitation of the selected web tool, which does not report frequency percentage of phrases and one-letter words.

The corpus for this research consisted of five online securities trading agreements (OSTA), also known as online trading service agreement, available online through the official websites of online stock brokers in the Philippines. Table 1 provides the information about the corpora source.

There are 10 recognized online stock broker companies in the Philippines (Canaoay, 2013). However, only the five mentioned provide ready access to their OSTA; the other companies withhold the said document to non-investors.

The frequency data were then examined in light of pragmatic considerations, such as levels of formality and speech acts, to shed light on the functional significance of the formal features of the corpus. To assess the indications of plain writing in the samples and to provide insights on the possible contract drafting style guidelines, three Plain English Laws (PELs) in the United States of America were used as references, particularly the 1980 Connecticut Plain Language Law, the 1993 Pennsylvania Plain Language Consumer Contract Act, and the 1998 Washington Plain English Handbook.

## 3. Results and Discussion

To address the research questions, the selected lexical and syntactic traits of the corpora are described. In general, the predominant styles noted indicate the initiative of stock broker companies in the country to apply plain writing standards albeit the absence of a Philippine law sanctioning its practice. Benchmarking on the identified PELs, the discussion also proposes some guidelines to make legal documents, such as OSTA, more easily comprehensible to nonspecialist users.

### 3.1 Lexical and Syntactic Features of OSTAs

#### 3.1.1 Terms of Reference

Coulthard and Johnson (2010) explained that the use of impersonal third-person references in legal documents makes the message appear more general and creates "social distance between sender and receiver" (p.11). As can be seen in Table 2, all the corpora used impersonal noun-phrase references, the most common of which is "this Agreement," referring to the online securities trading agreement, used at least 12 times in each corpus. Another notable recurrence is the use of "online trading facility" to refer to the service offered by the company. This phrase was evident in three out of five corpora with nearly equivalent frequencies. It is also observed that "the broker" is used alternately with an acronym of the company name such as ASC, ACEC, COL, and FMSBC. Hence, the nonuse of a company-name acronym explains the extensive use of "the broker" in the first corpus.

These observations suggest that the samples generally adhere to the traditional legal standard for writing contracts, which insists on the use of an objective, impersonal, and detached tone, characteristic of formal levels of communication. Perhaps, such a style more

**Table 2. Impersonal references in selected online trading agreements**

| Noun Reference | Corpus 1 | Corpus 2 | Corpus 3 | Corpus 4 | Corpus 5 |
|---|---|---|---|---|---|
| Account Owner/s | - | 10 | - | - | - |
| ASEC | - | - | 64 | - | - |
| ASC | - | 168 | - | - | - |
| Client | - | - | - | 84 | - |
| COL | - | - | - | 94 | - |
| FMSBC | - | - | - | - | 6 |
| Online Trading Facility | 15 | 16 | - | - | 15 |
| the Broker | 81 | 1 | - | - | 4 |
| the OSTA | - | - | - | 24 | - |
| the Agreement | 12 | 25 | 22 | 17 | 15 |
| Trade Settlement Account | - | - | - | - | 11 |
| Online Trading Service | - | - | - | - | 5 |

effectively sends the message that contracts are matters of high import. While this pragmatic function aptly justifies the use of impersonal references, repetition of these nouns or noun phrases within a sentence can make comprehension challenging for nonlawyer users. Consider the given extracts:

> ACEC may terminate my/our account for violations of the **Agreement** of **this Agreement**, other **Agreement** as indicated in the Philstocks.ph Website, or any grounds prescribed by the PSE, SEC or any applicable law. *(Extract from corpus 3)*

> The risk attendant to the use of the **Online Trading Facility** shall be for my account in as much [sic] as the use of the **Online Trading Facility** is electronically [sic] and system generated. *(Extract from corpus 5)*

Tiersma (1999) and Zaharia (2009) cited precision to rationalize the avoidance of pronoun use in such constructions. Also, not using pronouns gives the document a more authoritative quality. While pronouns are helpful cohesive devices, they may be misused leading to ambiguous reference and sexist language. The problem of vague reference is said to be especially true with the use of third-person personal pronouns (Zaharia, 2009) such as *he/she, it, its, they, them, their*. These reasons support the continued use of impersonal references in contracts as noted in the corpora.

### 3.1.2 Modality

Modal verbs are another characteristic feature of contracts (Coulthard & Johnson, 2010; Stygall, 2010). The word-density figures shown in Table 3 confirm this as *shall*, *may*, and *will* are uniformly used in the five corpora. *Shall* is particularly used more frequently than the other modal verbs with the exception of corpus 3, where *will* reflects a higher frequency. The tendency to

**Table 3. Modal verb use in selected online trading agreements**

| Modal verb | Corpus 1 | Corpus 2 | Corpus 3 | Corpus 4 | Corpus 5 |
|---|---|---|---|---|---|
| Shall | 33 (0.9%) | 88 (1.7%) | 3 (0.1%) | 58 (2.1%) | 72 (1.3%) |
| May | 16 (0.4%) | 42 (0.8%) | 20 (0.9%) | 19 (0.7%) | 42 (0.8%) |
| Will | 32 (0t9%) | 22 (0.4%) | 40 (1.7%) | 4 (0.1%) | 37 (0.6%) |
| Can | 5 (0.1%) | 3 (0.0%) | 1 (0.0%) | - | 4 (0.0%) |
| Must | 5 (01% | - | 1 (0.0%) | 2 (0.0%) | - |

favor the use of *shall* may be attributed to the force it gives a statement, which helps to emphasize the nature of contracts as binding legal agreements.

Kakzhanova (2013) explained that while *shall*, *may*, *will*, as well as *must*, are all categorized as "forcing modals" or those that compel a person to realize an action, they vary in the force of their compulsion. *Shall* is considered most forceful as it suggests strong determination and obligation for an action to be done. It is a language feature of directives, which are statements that leave the addressee no other option but to follow (Trosborg, 1991).

### 3.1.3    Legal Archaisms

In addition to avoidance of personal pronouns and excessive use of *shall*, another distinctive style in legal contracts is the preponderance of jargon and technical terms. Included in this specialized language are archaisms, which are "upper-register language" that originated from Law Latin and Law French as exemplified by such words as *de facto* (meaning, "in fact") and *in casu* (meaning, "in the present case") (Mattila, 2012). When the Anglo-Saxons rose to power,

there was a gradual shift from French and Latin to English. Accordingly, legal documents originally in French or Latin were translated into English. However, when the lawyers and clerks could not find exact English equivalents for technical expressions, they resorted to borrowing. This explains why, despite the abolition of Law French and Law Latin in legal proceedings in 1731, the influence of these two languages persisted in the form of antiquated expressions in legal documents (Tiersma, 2012). Examples include archaic morphology (e.g., *sayeth*, *withnesseth*), native expressions beginning with here and there (e.g., *therein*, *hereunder*, *thereof*, *thereto*), and other verbs (e.g., *darraign*), nouns (e.g., *surrejoinder*), adjectives (e.g., *aforesaid*), and prepositions (e.g., *pursuant to*, *prior to*, *anterior to*) that are considered legalisms or lawyerisms (Stanojevic, 2011). To avoid linguistic lapses, lawyers and clerks have opted to preserve such phrasing in legal documents, which are subject to rigorous scrutiny. This practice, which originated in England, was subsequently adopted by the American legal system and its colonies (Tiersma, 1999), including the Philippines. It is, therefore, not surprising to find a number of archaisms in the examined local corpora, as reflected in Table 4.

**Table 4. Legal archaisms in selected online trading agreements**

| Archaism | Corpus 1 | Corpus 2 | Corpus 3 | Corpus 4 | Corpus 5 |
|---|---|---|---|---|---|
| foregoing | 2 | 3 | - | 1 | 2 |
| hereafter | 2 | 2 | 1 | - | 2 |
| hereby | 9 | 27 | 1 | 13 | 14 |
| herein | 2 | 9 | 1 | 3 | 4 |
| hereof | 6 | 4 | - | - | 3 |
| hereto | 1 | 1 | - | - | - |
| hereunder | - | 4 | - | 1 | 1 |
| hereunto | - | - | - | 1 | - |
| prior to | 5 | 2 | 4 | 2 | 6 |
| pursuant to | 1 | 4 | - | - | 2 |
| thereafter | - | 1 | - | - | - |
| thereby | 1 | 2 | - | 1 | 1 |
| therein | 1 | 1 | - | 1 | 2 |
| thereof | 2 | 15 | 2 | 4 | 5 |
| thereon | - | 2 | - | 1 | 1 |
| thereto | 2 | 4 | 2 | 4 | 2 |
| thereunder | - | 2 | - | - | - |
| whereof | - | - | - | 1 | - |

As can be seen, the most commonly used archaic expressions are the adverbs *hereby* and *thereof*, used 64 and 28 times, respectively, across the five corpora. Other common but less frequently used expressions are *herein*, *prior to*, and *thereto*. A marked contrast is observable between corpus 2 and 3 with the former having the most number of archaisms (83 in total) and the latter, the least (11 in total). Tiersma (1999) contends that using archaic words, as in the case of the corpora, does not contribute to the precision of the language of the contract. He further attributes the insistence of its use to monetary incentives on the part of lawyers, whose services are availed to assist in the interpretation of this specialized language.

### 3.1.4 Sentence Length

Moving beyond lexical features, Trosborg (1991) maintains that syntactic qualities of legal documents present considerable difficulties in comprehending legal English. One fundamental syntactic feature is sentence length, which is easily associated with sentence complexity. In comparison with other technical writings, legal discourse is notable for lengthy and complex sentence structures, such as the extract below.

> For the purpose of selling, buying or performing other acts as stated herein, I hereby irrevocably appoint and constitute ASC, its officers, employees or successors-in-interest and/or assigns, as well as any sub-agent, broker, attorney-in-fact it may appoint for that purpose, as my true and lawful attorney with full power and authority to buy or sell, lend or borrow securities, or otherwise act for any of my account(s) whether carried individually or jointly with others, to agree upon the price of said securities, execute bills of sale, receipts, assignments of all my rights, title and interest to the purchaser(s) thereof or such other instruments in writing or documents as may be necessary and to deliver or accept delivery of the corresponding stock certificates and/or which ASC may directly or indirectly do or cause to be done in accordance with the powers herein conferred all of which are hereby deemed ratified by me in all respects for this purpose. ASC shall be entitled to rely on any instruments, notices and communications which it believes to have originated from me and I shall be bound thereby.

While all five corpora contain at least one considerably long sentence, the given extract from corpus 2 stands out with 183 words. If the Flesch standard, which gives a zero rating to a text that has an average of more than 37 words per sentence, is used to assess the sample statement, the text is easily categorized as postgraduate level or "very difficult to read" (Ross & Scott, 1996, as cited in Rajapakse & Rameezdeen, 2007). But considering the exact average sentence length ratings of the corpora shown in Table 5, it may be assumed that all five corpora have relatively acceptable readability levels, albeit varying in degree of comprehensibility.

It appears that corpus 3, registering the smallest average sentence length, is the most readable sample in the group. However, this case seems more an exception rather than the norm as three other corpora show ratings higher than 22 words per sentence. This noted trend suggests that the examined legal documents generally subscribe to the traditional form of contracts, which are noted for protracted constructions.

### 3.2 Indications of Plain Writing

### 3.2.1 Terms of Reference

While the use of impersonal noun references is rather expected in trading agreements, it is interesting to find first and second personal pronouns in nearly all of the corpora, with the exception of corpus 4. Table 6 shows that first-person plural pronouns (*we*, *us*, *our*) are the most commonly used in all four corpora. This is followed by first-person singular pronouns (*I*, *me*, *my*, *myself*), which are evident in three samples. Meanwhile,

**Table 5. Average sentence length in selected online trading agreements**

| Average Sentence Length | Corpus 1 | Corpus 2 | Corpus 3 | Corpus 4 | Corpus 5 |
|---|---|---|---|---|---|
| | 24.1 | 22.4 | 11 | 18.7 | 22.8 |

**Table 6. Personal references in selected online trading agreements**

| Pronouns | Corpus 1 | Corpus 2 | Corpus 3 | Corpus 4 | Corpus 5 |
|---|---|---|---|---|---|
| I | - | 110 | 54 | - | 139 |
| me | - | 43 | 19 | - | 60 |
| my | - | 94 | 55 | - | 125 |
| myself | - | 3 | - | - | - |
| we | 2 | - | 56 | - | - |
| us | 3 | 5 | 20 | - | 3 |
| our | 5 | 2 | 52 | - | 4 |
| you | 98 | - | - | - | 120 |
| your | 74 | - | - | - | - |
| yours | 1 | - | - | - | - |
| they | 2 | - | 1 | - | - |
| them | 1 | 2 | - | - | - |
| their | 7 | 4 | - | 2 | 5 |
| it | 9 | 19 | 2 | 4 | 20 |
| its | 16 | 33 | 10 | 16 | 2 |

the use of second-person pronouns (*you*, *your*, *yours*) is less frequent and is noted only in corpus 1 and 5.

Comparing the density and variety of personal references in the samples examined shows that corpus 5 registers the most number of personal pronouns ranging from first-person plural and singular to second-person references. Such lexical richness, which is apparent in this corpus as far as terms of reference is concerned, seems unusual but implies an effort among stock broker companies in the Philippines to produce more readable contracts that comply with Plain English standards.

To claim that the samples that used first and second personal pronouns are more readable than those that did not is supported by the contention that pronoun use "is perceived as more desirable than the use of definite noun phrase" (Gordon et al., 1993; Krahmer & Theune, 2002, as cited in Pitler & Nenkova, 2008, p. 188). Readability studies argue that using pronouns contributes to text coherence and facilitates the reader's prediction of idea connectedness (Elsner & Charniak, 2008; Nenkova & McKeown, 2003; Siddharthan, 2003, as cited in Pitler & Nenkova, 2008). In effect, personal references in a traditionally complex formal document make the text less intimidating. Conversely, using multiple noun-phrase constructions "requires readers to remember more items" (Pitler & Nenkova, 2008, p. 190), thereby, making the text more challenging to read.

The linguistic merits of using personal pronouns in contracts are also acknowledged by the 1980 Connecticut Plain Language Law, the 1993 Pennsylvania Plain Language Consumer Contract Act, and the 1998 Washington Plain English Handbook. The Connecticut statute stipulates that [contracts] "must use personal pronouns, the actual or shortened names of the parties to the contract, or both, when referring to those parties" (Stoop & Churr, 2013, p.538). Similarly, the Pennsylvania Act specifies that, "when the contract refers to the parties to the contract," the reference should use "personal pronouns, the actual or shortened names of the parties, the terms 'seller' and 'buyer' or the terms 'lender' and 'borrower'" (Grim, Biehn, & Tatcher, 2008, para. 6). These recommendations are justified comprehensively by the Office of Investor Education and Assistance of the U.S. Securities and Exchange Commission (1998), stating that the use of personal pronouns "dramatically improves" the clarity of the document, thereby, aiding in comprehension. Personal references clearly state the provisions that apply to the reader investor and to the stock broker company, allow the company to converse with the reader in a more straightforward manner, and help keep sentences shorter. Contrary to lawyers' perception that pronouns tend to cause ambiguous and sexist references, the Washington handbook claims that using

this part of speech may, in fact, help avoid abstractions through the use of concrete and familiar vocabulary and prevent the "he or she" dilemma through the use of first- and second-person pronouns, which are not gender-specific.

### 3.2.2 Modality

On the matter of verb modality in contracts, the PELs do not prescribe specific verbs for use in the terms of agreement. The general recommendation is simply to use simple and active verb forms (Stoop & Churr, 2013). Using this guideline as reference requires a close examination of the voice of the modal-verb phrases. A cursory review reveals the use of active voice in some modal-verb constructions, as shown in the extracts.

You **shall** explicitly **agree** to be bound by the bylaws, constitution …. *(Extract from corpus 1)*

I **may terminate** my Online Account by…. *(Extract from corpus 2)*

Client **shall use** COL's service only in accordance with…. *(Extract from corpus 4)*

I **shall notify** you within…. *(Extract from corpus 5)*

These active form samples, however, do not signify the absence of passive constructions. Although not quantified in this research, passive modal-verb phrases are also noted in the corpora, indicating only a partial effort on the part of OSTA drafters to apply plain writing norms.

### 3.2.3 Legal Archaisms

To address the problem of ambiguity because of the use of archaic expressions, the Connecticut PEL advises the use of "everyday words." Likewise, the Pennsylvania PEL provides two specific guidelines to encourage the use of more familiar as opposed to antiquated language:

(3) The contract should not use technical legal terms, other than commonly understood legal terms, such as "mortgage," "warranty" and "security interest."

(4) The contract should not use Latin and foreign words or any other word whenever its use requires reliance upon an obsolete meaning. (n.p.)

Based on the frequency data presented in Table 4, Table 7 below shows the total number of legal archaisms noted in each corpus.

The minimal use of legal archaisms noted in corpus 3 insinuates some awareness on the part of contract drafters of the need to use words that more people can easily understand. Meanwhile, the other OSTAs need further effort to reduce legal archaisms in the contract phrasing.

### 3.2.4 Sentence Length

On the matter of sentence length, Stoop and Churr (2013) mention two specific guidelines from the Connecticut statute: "(a) the average number of words per sentence must be fewer than 22; and (b) no sentence in the contract may exceed 50 words" (p. 538).

Revisiting the values in Table 5 reveals that corpus 1, 5, and 2 fail the first objective test. Having average sentence lengths of 24.1, 22.8, and 22.4, respectively, they clearly exceed the prescribed 22-word limit. Only corpus 3 and 4 satisfy the standard, with the former registering the most manageable sentence length with an average of 11 words per sentence. As illustrated by corpus 3, it is feasible for OSTAs to present terms of agreement in shorter, easier-to-comprehend sentences.

The second guideline requires a more comprehensive sentence-level scrutiny of the text to ensure that every statement contains less than 50 words. Using the Word Count function in Microsoft Word, a cursory review of the samples shows that all

**Table 7. Total legal archaisms in selected online trading agreements**

| Corpus 1 | Corpus 2 | Corpus 3 | Corpus 4 | Corpus 5 |
|----------|----------|----------|----------|----------|
| 34 | 83 | 11 | 33 | 45 |

five corpora contain at least one sentence violating the 50-word limit. Hence, there is less evident indication of plain-writing initiative in this aspect of contract sentence construction.

**3.3    Suggested Plain English Guidelines**

**3.3.1    Terms of Reference**

Benchmarking on the American statutes, Philippine OSTAs may benefit from more extensive use of personal pronouns. Doing so may help make the contract more reader-friendly and help avoid needless repetition of impersonal noun references, which can also be addressed by using synonyms. Applying these recommendations may yield clearer revisions, as follows:

> ACEC may terminate my/our account for violations of **this Agreement** and other **legal arrangements** as indicated in the Philstocks.ph Website, or any grounds prescribed by the PSE, SEC or any applicable law. *(Revision of extract from corpus 3)*

> The risk attendant to the use of the **Online Trading Facility** shall be for my account inasmuch as **its** use is electronic and system-generated. *(Revision of extract from corpus 5)*

On the related matter of point of view or the perspective used in presenting the provisions of the contract, corpus 2, 3, and 5 used first-person references (*I*, *me*, *my*, *we*) while corpus 1 opted for the second-person perspective (*you*, *your*). As to which point of view is more effective depends largely on the desired tone. Using the first-person point of view makes the contract more personalized, emphasizing the active accountability of the investor for entering the said agreement. In contrast, the second-person view underscores the imperative nature of the contract. Stock broker companies may decide between the two options and apply the corresponding point of view consistently in the contract.

**3.3.2    Modality**

While the active form is applicable in modal-verb constructions, the PELs' recommendation to "use simple verbs" appears challenging because the multimodality of the commonly used verbs *shall* and *will* may make the verbs more complex than simple. Consider the given extracts:

> I hereby agree that this Agreement and all the terms thereof **shall** be binding upon my heirs, executors, administrators, personal representatives and assigns. *(Extract from corpus 2)*
> All the terms thereof **will** be binding upon my/our heirs, executors, administrators, personal representatives and assigns. *(Extract from corpus 3)*

The extracts show different ways of stating the contract clause for succession in case of the account owner's death. It is evident that corpus 3 used *will* whereas corpus 2, as well as the other corpora, used *shall*. Perhaps, the intent behind this lexical deviation is to simplify the language of the contract. However, some readers may associate futurity rather than modality with the use of *will*. If thus construed, the action implies a temporal rather than directive force; that is, the provision is understood to be a consequential action that automatically transpires rather than one that is consciously followed by the investor. This illustration supports Kakzhanova's (2013) assertion that using either *shall* or *will* may potentially confuse readers since these verbs could serve as "pure indicators of tense, pure indicators of modality, or both at once" (p. 2534). Reid (2015) also observes this inconsistency in the designation of words of obligation and further suggests caution in the use of *shall*.

To avoid this confusion, Tiersma's (1999) suggestion to use *must* or *is* (*be* verb) in place of *shall* may be considered. Unlike *shall*, the modality of *must* is more definitive, expressing purely obligation or necessity. While Trosborg (1991) observed that *must* is notably absent or rare in legal texts, it remains an alternative for more lucid contracts. In some cases, the modals and *be* verbs may even be omitted as the main verb seems to already capture the essence of the specified action. In any case, the assertion

of the obligation to strictly abide by all the terms of agreement is already stated in the introduction (also called *commencement*) and reiterated in the closing section (also called *testimonium*) of the contracts. If the suggested verb modifications are applied, statements become shorter, more direct, and clearer, as illustrated:

> All the terms thereof **are** binding upon my/our heirs, executors, administrators, personal representatives and assigns. *(Revision of extract from corpus 3)*

Using more precise modal verbs or avoiding them altogether helps satisfy the given guideline. Anchoring on the PELs, the comprehensibility of the examined contracts may be enhanced through a careful review of the documents' modality and subsequent revisions guided by the pragmatic function of modal verbs.

### 3.3.3    Legal Archaisms

The suggested remedy to the vagueness of archaisms is the substitution of shorter, more common words. The replacements listed below are based on the suggestions of Stanojevic (2011) and Zaharia (2009), and definitions from the 2014 Merriam-Webster Dictionary.

| Archaism | Replacement | Archaism | Replacement |
|---|---|---|---|
| foregoing | previous | pursuant to | under/ in accordance with |
| hereafter | after/ afterwards | thereafter | afterwards |
| hereby | here/ (omit the word) | thereby | so/ thus |
| herein | here/ in this Agreement | therein | there |
| hereof | of this | thereof | of that/ of it |
| hereto | to this document | thereon | on that |
| hereunder | here/ under that | thereto | to that/ to it |
| hereunto | to this | thereunder | under that |
| prior to | before | whereof | with/ by which |

When these replacements are applied, the resultant statements may appear less intimidating to nonspecialist readers of the contract, as illustrated:

| Extract | Revision |
|---|---|
| It is **hereby** further agreed that the terms and conditions printed on this Agreement form part **thereof** as fully as if they were stated at length over your signature(s) **hereto** affixed and they are therefore unconditionally agreed to. (*Extract from corpus 1*) | It is further agreed that the terms and conditions printed on this Agreement form part **of it** as fully as if they were stated at length over your signature(s) affixed **to this document** and they are therefore unconditionally agreed to. |

### 3.3.4    Sentence Length

The guidelines stipulated in the Connecticut PEL may serve as a helpful objective benchmark to provide concrete controls in the length of sentences in contracts. This will evidently require rewriting statements for conciseness. While such a revision may result in longer documents because of the necessity to cover all legal considerations, it will ultimately serve the purpose of contracts, which is for the parties to the agreement to have a common understanding of the terms of the contract. Without such "meeting of the minds," the courts reserve the right to render such contract "unconscionable" or invalid (Scheibal, 1986, p. 59).

In brief, this study suggests the use of first and second personal pronouns, *must* instead of *will* or *shall* to express obligation, shorter and more common words in place of legal archaisms, and an average of 22 words per sentence. Aside from the USA PELs that originated these guidelines, the test of plain English in Canada conducted by Masson and Waldron (1994, as cited in Cambell, 1999) and a similar comprehension study in New Zealand by Cambell (1999) provide empirical evidence that applying these plain-language conventions make the documents more comprehensible. Proof of this is the number of "propositions or idea units correctly recalled and paraphrased" by nonlawyer readers (p. 340). The author has not encountered research disproving these findings, although some studies question if simply following these prescriptions already satisfies the requirement for plain English writing (Candlin, Bahtia, & Jensen, 2002; Loughran & McDonald, 2014; Scheibal, 1986). Whether it is better to give general or specific guidelines for PELs remains debatable and is perhaps a matter for the better judgment of state legislators.

Clearly, terms of reference, modality, legal archaisms, and sentence length are only a few of the readability measures considered in assessing the comprehensibility of contracts to potential investors with limited knowledge of legal language. While not all-inclusive, the analysis provides insight into the current status of Philippine contracts, particularly OSTAs, and possible directions for the implementation of plain writing standards in the country.

## 4.  Conclusion and Recommendations

Overall, the study confirmed that the examined trading agreements possess traditional legal form characterized by the use of impersonal noun references; modal verbs, particularly *shall*; legal archaisms; and long sentences. While the Plain Writing for Public Service Act of 2013 is pending ratification, it appears that some stock broker companies in the Philippines have already begun with their efforts to simplify their consumer contracts. This initiative is evidenced by the use of first- and second-person pronouns, the use of active voice in modal-verb phrases, the minimal use of legal archaisms, and the ideal average sentence length of 11 words. Benchmarking on the related stipulations in the Connecticut and Pennsylvania PELs and the U.S. Securities and Exchange Commission *Plain English Handbook*, the following guidelines are, thus, recommended as measurable bases for plain writing in Philippine contracts:

1. Use first and second personal pronouns and the shortened names of the parties to the contract when referring to those parties.
2. Use *must* to express obligation. An alternative is to remove the modal verb and use a *be* verb instead since the force of command is already expressed in the introduction and the closing sections of the contract.
3. Replace legal archaisms with more familiar words.
4. Limit the average sentence length to 22 words. Ensure that no sentence is more than 50 words long.

Whether the implementation of these guidelines effectively simplifies contracts without sacrificing the necessary legal content requires testing. The results of such an examination may inform the Philippine's position on the issue of specific versus general statutes for the application of plain English. Another related issue is concerned with how compliance with the PEL will be ensured. Who will be responsible for checking that all legal contracts follow the policy stipulations? What sanctions will be served for noncompliance? These questions must be considered in drafting the implementing rules and regulations of the Philippine bill.

While the present study offers some preliminary conclusions regarding the use of plain English in contracts, other important limitations are evident. The prescriptive approach is easily subject to questions of practicality, generalizability, and effectiveness. Is it necessary and feasible to rewrite all OSTAs to apply the given guidelines? Are these suggestions acceptable to all legal and nonlegal stakeholders? Will these revisions in the OSTAs guarantee easier understanding of the legal documents by Filipino nonlawyers? These questions, which are beyond the scope of this research, are opportunities for further investigation.

In addition, the findings of this study may be further enriched by a stylistic and descriptive evaluation of other lexical and syntactic features of contracts, including word lists, prepositional phrases, negation, nominalization, passive constructions, and clause embeddings. To account for the aspects of readability that cannot be measured mathematically, qualitative assessments of the readability of OSTAs through focus group testing can be done. This approach can help explore the nonquantifiable factors that determine the readability of a document such as reader vocabulary, level of interest, and prior knowledge.

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