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A Study on the Linguistic Features of Disclaimers in English

Field Study : The English Language

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**M.A. THESIS IN THE ENGLISH LANGUAGE
(A Summary)**

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CHAPTER 1: INTRODUCTION

1.1. RATIONALE

Alongside the development of the society, in many areas of life, from the literary to the scientific sphere, language has been simultaneously shaped and honed in a drive to generate ever more attention and persuasive impact. The concern for language and its function urges more and more effort in discovering its stretches of performance. With the insightful progression in Discourse Analysis, niches in language use are longer a far-reaching goal. As such, Brown G. and Yule G. (1983) stated, Discourse analysis could not be restricted to the description of linguistic forms independent of the purposes and functions which those forms were designed to serve in human affairs.

Since the analysis of discourse can help answer innumerable questions and by the gains it certainly brings, this study is conducted to make an original contribution to this academic and practical field. The subjects in question are English Disclaimer and its linguistic features.

It is not a coincidence that the researcher comes up with the study on English Disclaimers. The urge lies in the significance of the subject in the context of increasingly serious legal issues paralleling the social development as well as the beneficial outcome generated from the study results to the community of society. As a matter of fact, nowadays, most of the products in any store or online are tied with rules which display a kind of avoidance strategies in the form of Disclaimers. These Disclaimers are associated with frequently

guidance which ultimately serves the completion of right and obligation of the persons related. As Disclaimers are closely attached with legal issues, any deals and solutions they give prevent people from crossing beyond their bounds of law. Many Disclaimer writers, hence, stress the importance of this legal text and make it known that the failure of understanding Disclaimers resulting in the inability to execute a Disclaimer can be a costly mistake.

The situation goes more seriously when the victims include those who are still under school and are supposed to have little knowledge about Disclaimers and legal responsibilities going along with them. The more they are exposed a wider borderless society with the aid of English language and Internet, the more they are taking a risk of being labeled deviant to go against the Disclaimers. In the context of globalization, as long as things are increasingly considered to be in tight connections with rules, awareness of Disclaimers should be raised among Vietnamese people.

From the light of the significance of the study, the researcher thrives on pursuing **the Study on the Linguistic Features of Disclaimers in English** in order to help Vietnamese people shape an idea of English Disclaimers in terms of pragmatic and structural features as well as to learn more about their awareness and attitude as well as their understanding towards these legal texts.

1.2. AIMS AND OBJECTIVES

1.2.1 Aims

The aim of the study is to examine Disclaimers in terms of linguistic features to help people be more aware of Disclaimers and be able to avoid breaking the rules tied in those Disclaimers.

1.2.2 Objectives

In this study, we aim:

- To review literature to set a framework for linguistic description of this English Disclaimers;
- To provide an in-depth description of English Disclaimers in question in terms of pragmatic features;
- To identify the goal-oriented organization of English Disclaimers in such a way of interpreting their structural features and body parts.
- To investigate the understanding of Vietnamese people of English Disclaimers as well as their attitude towards these legal texts.
- To raise awareness of Vietnamese people in general and those with direct commercial/business involvement with English Disclaimers.
- To put forward pedagogical suggestions as to how to write an English Disclaimer to obtain a good Disclaimer writing and how to have effective Disclaimers written in English to cope with the increasing globalization.

1.3 QUESTIONS OF THE STUDY

- 1. What are the pragmatic features of English Disclaimers?*
- 2. What are the structural features of English Disclaimers?*
- 3. How do Vietnamese people understand about English Disclaimers and what is their attitude towards these legal texts?*
- 4. What suggestions should be made as to how to raise the awareness of Vietnamese people for Disclaimers and how to write Disclaimers in English?*

1.4 SCOPE OF THE STUDY

As the researcher's access to foreign papers or documents or other physical products containing English disclaimers is unfortunately infeasible, most of the disclaimers collected are from the Internet only and cover different legal aspects. Since it is the approach the research tries to follow and due to the unbalanced frequency of occurrence of these legal texts in the home country (Vietnam), the study aims at the English Disclaimers only. Such a strategy means that the data themselves are a bit restricted in scope. On the other hand, it gives greater cogency to the overall message. It is believed, therefore, that in contrast to the limitations of the data is the strength of helping the researcher to concentrate on the goals she aims to achieve.

1.6. ORGANISATION OF THE THESIS

This study consists of 5 chapters:

Chapter 1: Introduction

Chapter 2: The Literature Review and the Theoretical
Background

Chapter 3: The Methods and Procedures.

Chapter 4: Findings and Discussions

Chapter 5: Conclusions

CHAPTER 2: LITERATURE REVIEW

2.1. LITERATURE REVIEW

Wright (2008), in his paper “Your Mileage May Vary: A General Theory of Legal Disclaimers” mentioned many kinds of disclaimer a common feature of public and commercial life. He stressed that “while we will be concerned here about disclaimers only in legal contexts, the range of such legal contexts is broad”. Broad and diverse as disclaimers are, people are supposed to have some ideas about these kinds of text and obey the so-called official law. However, “Wherever there are rules there will be temptations for people to break them”. Albas D. and Albas C. (1993) stated in their article the actual situation that some people still ignore those rules although the rules are set up clear enough for them to understand.

Although some authors have touched the niches to discuss about disclaimers, there is no previous research which goes deeper in analyzing these legal texts in terms of pragmatic and structural features. Neither are any research about English Disclaimers nor a clear picture of a concept of Disclaimers; the realizations about the elements making up a Disclaimer nor its function in the reality exposed with wide stretch of thorough analyses. More critically, the issue of having awareness and clear understanding about disclaimers has not been put into consideration by any Vietnamese researchers much as the subject of Disclaimer is considered to be as one of crucial importance. Therefore, it posts significance on the study of

Disclaimers with a view to helping Vietnamese people be more aware of and be well provided with information about Disclaimers.

2.1. DISCOURSE AND DISCOURSE ANALYSIS

2.1.1. Overview

Discourse is defined in a number of ways, as language use above the level of the sentence; as language use in context and as real language use. Discourse encompasses the use of spoken, written and signed language and multimodal forms of communication and is not restricted to “non-fictional” or verbal (gestures and visual) materials.

In fact, Discourse Analysis (DA) gives us insight into various aspects of language in use: how texts are structured beyond sentence level; how talk follows regular patterns in a wide range of different situations. Moreover, this theory has many practical applications above and beyond knowledge about language for its own sake.

In this research, disclaimer as a discourse will be fully analyzed with a view to opening up a picture of a typical disclaimer with its linguistic as well as structural features. However, the research’s ambition does not stop at the discovery of the text but more significantly, a further step will be taken to help Vietnamese people be aware of this legal document and understand more about the text. Not only has this knowledge done wonders to those as customers, it will also help business or law trainees who learn how to write a disclaimer. This study casts very basic foundation for them to follow. This is the practical application that will be definitely beneficial for many.

2.1.2. Critical Discourse Analysis

2.1.2.1. Overview of Critical Discourse Analysis (CDA)

Being one of specific theoretical perspective and analytical approaches used in linguistic Discourse analysis, CDA is characterized not merely a particular research method, but a way of approaching and thinking about a problem critically. However, the significant difference between DA and CDA lies in the constructive problem – oriented, *interdisciplinary* and *multi-methodical* of the latter. Squire (2002) points out that non – critical Discourse analysis tends to look at and exchange with a focus on the immediate context, rather than the larger socio-historical context. CDA not only looks at the available discourse but asks how and why ideologies are circulating in the workplace discussion, what is being naturalized and who benefit.

It “moves between broad social formations and micro-textual analytic work... to a critical and socially motivated rather than merely descriptive analysis” [33]. Examining these methods means raising questions of the role of disclaimer as a legal written text currently used in a wide range of fields. Given that, a CDA approach is ideal for a study on linguistic features of disclaimers in English.

2.1.2.2. Critical Discourse Analysis as Methodological Perspective

The approach employed in this study is inclined to the analysis of pragmatic and structural features of English Disclaimers. As long as the study’s significance lies in the benefit of Vietnamese learners of English, the Vietnamese of all careers in general and Vietnamese business and law trainees in particular, an insight into the attitude and

the extent to which these persons are able to understand and interpret English Disclaimers is also desired to be reached.

2.2. SPEECH ACT

2.2.1. Classification of Illocutionary Acts

2.2.1.1. Representative

2.2.1.2. Directive

2.2.1.3. Question

2.2.1.4. Commissive

2.2.1.5. Expressive

2.2.1.6. Declaration

2.2.2. Felicity Conditions

Preparatory Conditions.

Sincerity Conditions.

Essential Conditions.

Propositional Content Conditions.

2.2.3. Explicit vs. Nonexplicit Illocutionary Acts

2.3. THE DISCOURSE OF DISCLAIMER

2.3.1. English Disclaimer as a legal document

A **disclaimer** is generally any statement intended to *specify or delimit the scope of rights and obligations* that may be exercised and enforced by parties in a legally-recognized relationship. In contrast to other terms for legally operative language, the term

"disclaimer" usually implies situations that involve some level of uncertainty, waiver, or risk. Here is an example of a Disclaimer.

Disclaimer: The materials are provided "as is" without any express or implied warranty of any kind including warranties of merchantability, noninfringement of intellectual property, or fitness for any particular purpose. In no event shall btw usa or its suppliers be liable for any damages whatsoever (including, without limitation, damages for loss of profits, business interruption, loss of information) arising out of the use of or inability to use the materials, even if btw usa has been advised of the possibility of such damages. Because some jurisdictions prohibit the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you

A disclaimer may specify mutually-agreed and privately-arranged terms and conditions as part of a contract; or may specify warnings or expectations to the general public (or some other class of persons) in order to fulfill a duty of care owed to prevent unreasonable risk of harm or injury. Some disclaimers are intended to limit exposure to damages after a case of harm or injury has already been suffered. Additionally, some kinds of disclaimers may represent a voluntary waiver of a right or obligation that may be owed to the disclaimant.

2.3.2. General Characteristics of Disclaimers in English

The sample of 100 Disclaimers collected eventually gives us an insight into Disclaimers. First of all, the initial look into Disclaimers with its general features is necessary.

As Disclaimer is essentially a legal statement designed to protect both the company and its customers by informing the customers of terms and extent of the company's services or products, it is clearly and frequently labeled as *Disclaimers*. There are many

cases wherein *Disclaimers stand alone* and they are easy to be recognized. However, cases in which *Disclaimer is just one single content among other legal information* are the most likely to cause confusion. Therefore, the labeling of Disclaimers helps customers to distinguish between Disclaimers and many other important legal parts located in the surrounding whereabouts such as Terms and Conditions, Limitation of Liability, Agreement of License...

Disclaimer is not limited in terms of length. It is noticing that 70% of Disclaimers are single paragraph while the other many cover more than two stating and communicating terms and extent of the services or products to the readers. Depends on the complication and the risk relating to the product, more information is added to the Disclaimer to protect the company from legal prosecution should the customers misuse the product or service. Besides, Disclaimers' *font size* is clearly readable to an average person. The most frequent verb tense in a disclaimer is *present tense* while *active* and *passive voice* are both employed in different contexts.

2.3.3. Distinguishing Disclaimers and other terminology

2.3.3.1. Disclaimers

2.3.3.1. Terms and Conditions

2.4. SUMMARY

CHAPTER 3: METHODS AND PROCEDURES

3.1. RESEARCH DESIGN AND METHOD

This study is based on the theory of CDA. Accordingly, different research methodological approaches were employed in order to focus on the two dimensions in linguistic analysis of English Disclaimers: *the pragmatic* and *structural interpretations*. In this study, we use a combination of the deductive, inductive, qualitative, quantitative, descriptive, synthetic and analytic methods.

3.2. SUBJECT SELECTION AND DESCRIPTION

3.2.1. Disclaimers as the subject of the study

3.2.2. Vietnamese People

3.3 THE SAMPLE

I collected 100 samples of English Disclaimers. The Disclaimers followed the process of grouping, analyzing, and generalizing. The typical structure and semantic features drawn were attempted to serve as representative samples for the whole Disclaimers in English.

The questionnaires and diagnostic test were administered to a population of 150 informants, which means 50 informants matched each category of subject. These informants were treated as the ones that provided the representative samples of the whole group.

3.4. METHOD OF DATA COLLECTION

- For the collection of Disclaimers, I made use of surveys and observation of instances of English Disclaimers found in the Internet.

- The collection of data from the informants was obtained using 2 measurement instruments: survey with *Questionnaires* and *Diagnostic test*.

3.5. DATA COLLECTION

3.6. DATA ANALYSIS

3.7. ETHICAL CONSIDERATIONS

CHAPTER 4: FINDINGS AND DISCUSSIONS

4.1. DESCRIPTION OF PRAGMATIC FEATURES OF ENGLISH DISCLAIMERS

The study of pragmatics as mentioned helps make the picture of Disclaimers in English become more vivid and colorful as it highlights the ways in which context contributes to meaning rather than just merely focus on the transmission of meaning depending on the linguistic knowledge such as grammar or lexicon etc. In the big umbrella of pragmatics, *speech acts* specifically is considered as the main thread that runs through the analysis of these Disclaimers.

According to the statistics, the distribution of speech acts employed by the English Disclaimers is as follow. As can be seen from Table 4.1, three types of illocutionary acts are strongly presented here: *Representative*, *Directive* and *Declaration*.

Table 4.1 Types of Illocutionary acts employed by the English Disclaimers

Type	Number of instances
<i>Representative</i>	520
<i>Directive</i>	481
<i>Question</i>	0
<i>Commissive</i>	20
<i>Expressive</i>	0
<i>Declaration</i>	257

4.2. STRUCTURAL INTERPRETATION OF ENGLISH DISCLAIMERS

The organization of discourse is one of the central issues of discourse analysis. These distinctive features of a text can help maintain the cohesion and coherence of a text, leading to the comprehension easily achieved by the readers. However, how to diagnose and analyze such an organization of text is not a simple question to be answered. Swales (1990), fortunately, suggest “move analysis” as the basis for defining a text.

In this thesis, we attempt to make it known the overall structure or organization of English disclaimers by identifying each move or information of Disclaimers.

Regardless of the variations in length in Disclaimers, **the fullest version of a disclaimer** should cover terms of use regarding the following information illustrated in Table 4.4.

Table 4.4 The fullest version of an English Disclaimer

Moves	Content
Inf. 1	The quality (of the information/content)
Inf. 2	The availability of services offered to certain groups of people or geographical locations
Inf. 3	(No) Endorsement of recommended information elsewhere
Inf. 4	The information provided is for informational/ educational purposes only and not intended to constitute professional advice as circumstances will vary from person to person
Inf. 5	Others using the products cannot hold the company responsible for any loss or damages arising from supplying material

Inf. 6	The company is not liable for the actions of users. That the user should know that he or she is using the product or service at their own discretion and responsibility . Accordingly, the company is released from accepting any responsibility.
Inf. 7	The company's limited responsibilities and free of warranty on a number of matters.
Inf. 8	Prohibitive Rules
Inf. 9	The company is able to reserve the right to discontinue or modify its services at any time. The company reserves the right to alter, amend or change its information at any time
Inf. 10	Readers to contact the company directly via email should they wish for the company to remove any content that they have identified as being sensitive, harmful, or unnecessary
Inf. 11	The Law under which the Disclaimer is subjected to. This includes a legal statement referring to any applicable laws and or regulations pertaining to the country in which the company is based

4.2.3. Analysis of contents in English Disclaimers

Table 4.6 Moves in English Disclaimers

Moves/ Inf.	1	2	3	4	5	6	7	8	9	10	11
(%)	50	10	20	60	59	79	85	42	25	20	20

4.3.2.1. What is the attitude of Vietnamese people towards English Disclaimers?

According to the results collected, most of the informants of three groups regardless their knowing English much or not, saw

English Disclaimer as a matter of indifference. They showed their lack of caring, interest or attention paid to such legal document. The reasons for such negative attitude may be as follows.

- a. Vietnamese people's habit of paying little attention to legal documents.*
- b. The scarce appearance of Disclaimers as legal document*
- c. The primary purpose of Disclaimers*
- d. The long-rooted habit of Vietnamese users of products*

4.3.2.2. The Vietnamese's understanding of English Disclaimers

It is clear that for the majority of informants in the diagnostic test, an English disclaimer is not a very difficult text for those who use English to understand thanks to its clarity, brevity, and clear-cut word choices. Besides, a disclaimer does not employ any stylistic devices which ensure the simplicity of a legal document, making it easy for everybody who knows English to easily understand. 90% of third-year students and 66% working informants from group 2 are in Scale A in their assessment about their comprehension of an English disclaimer. On a credit side, if they come across such legal statement as English disclaimer, reading comprehension of this text is not a problem. They should be aware of the responsibilities they have to bear when making up their mind of using a product or service. They should be aware of the necessity of seeking advice for further information for their own sake. They should be more cautious and more attentive rather than be careless and ignorant. Well understood the information as they did, what makes them follow what is written down in a disclaimer is their attitude towards this legal text.

The general look can give us an optimistic side of people's understanding towards Disclaimers. However, a narrower look into some unsatisfactory results from the still high number of wrong questions made by the first two groups of informants is very essential. Question 2 seemed to be problematic for most of them. While the information embedded in this question is also of great importance since it is said to best tell the nature of a disclaimer, the failure of informants' comprehending it poses a question about their overall understanding about the text in general. Obviously, for them, detailed information is not a problem but they fail to interpret the ultimate function of a disclaimer. Perhaps, their inability to generalize all the information in a text as a whole or in other words, their inability to read for gist counts. As a disclaimer, in order to fulfill their eventual purpose, they have to cover many aspects of information which the study has discussed in full depth in previous chapters, being unable to acknowledge these features and realize a disclaimer with all such information cause them difficulty in comprehending its function and purpose. Therefore, in helping Vietnamese people be aware of these texts, giving them ideas about the lexical and structural features of a typical disclaimer is very significant.

Other questions that some of the informants from group 2 failed to give right answers are Question 4 and 6. Question 4 covers Information 1, stating the quality of the content in the disclaimer while Question 6 covers Information 6, insisting the users' responsibility and discretion when deciding to buy a product. Perhaps, the way the writer arranges Information 1 in the disclaimer is a little bit tricky. He, in fact, writes two statements about the

credibility of the content. First, he mentioned the accuracy of the information, and then he notified that such information in the text may be out of date or erroneous as the matter of changing in medical information. Although the two statements are both classified into Information 1, they are used differently. They are put in two separate paragraphs and convey different messages. However, quick reading and careless thinking can result in comprehension failure. Readers in the test failed to give correct answers due to this fact. The situation goes the same to Question 6-Information 6. Besides, under the disguise of illocutionary acts like Representative (Question 4-Information1) and Directive (Question 6-Information 6), the performative senses in these two aspects of information are not explicitly presented due to the syntactic forms employed and the modal verbs used. Hence, the stress that the information gives is not so strong, failing to draw attention from readers. That explains why some had wrong answers for such questions/ information.

CHAPTER 5: CONCLUSIONS

5.1. CONCLUSION

By studying the linguistic feature, the study covers 2 areas of investigation: first, the pragmatic features and second, the structural features of English disclaimers. Also, the study draws some points about the understandability of Vietnamese people about English Disclaimers and their attitude towards these legal texts. Here are some conclusions from the result analysis:

5.1.1. In terms of pragmatic features:

The study shows that the most frequent speech acts employed by the language of English Disclaimers are Representative, directive Declaration and Commissive. Of which disclaimers' language is inclined to the description of some states of affair by carrying out acts of stating, notifying... , to the advice trying to get the users make a good decision on the products or service, to the changing the status of the users to make them known that their actions are prohibited in a number of cases. For each of the acts, illocutionary force is expressed with a different level of strength, just to fulfill the targeted acts. However, this inclination is surprisingly presented in a systematic manner in which some particular information or cluster of information is tied with particular acts, or in other words, it can be said that some speech acts goes in correspondence with certain sorts of information, which makes up the distinctive characteristics of the language in disclaimers.

5.1.2. In terms of structural interpretation

Results of the study also indicate that the structure of a typical disclaimer is related to its overall purpose and function, not an arbitrary one. Disclaimers exhibit certain features that mark a text out as a disclaimer. Some of these are to do with its visual shape – the title, the format. There are also features of a more narrowly linguistic and structural kind that relates the way in which the English Disclaimers present their information. After samples of English Disclaimers are chopped down horizontally into pieces of information element which constitute to a big picture of an English Disclaimer, it is revealed that the fullest structure of an English disclaimer will contain certain types of information. Some are core information and occur with high frequency, leading to the fact that they are essential elements which make up a legal text as Disclaimer. Besides, the dimensional analysis of each specific information in terms of lexico-grammar, recognizing signals has significantly yielded an in-depth picture of the salient linguistic features of the texts in question. Once the concept of Disclaimers with its distinctive features in terms of text organization and lexical arrangement are no longer a question, people will be well-equipped with legal knowledge while dealing with such legal texts like English Disclaimers attached to some products' information.

5.1.3. In terms of the understandability of Vietnamese people about English Disclaimers

In general, Vietnamese people have a fair comprehension of English Disclaimers though they have not given enough due

attention to these texts. The reasons for this fact vary; some are because of the Disclaimers themselves, others are due to the people's side. However, in the present globalized background, international communication is unavoidable by all means. A better knowledge of legal issues and better awareness are of crucial importance in proceeding the process of these forms of communication, especially in these cases, between the company and its customers.

5.2. RECOMMENDATIONS

5.2.1. Teaching Disclaimers to Vietnamese learners of English, especially business students

Practically, one of the areas where the findings will have implications is the teaching of ESP to undergraduates majoring in business in Vietnam. The theoretical principles underlying this research and the findings reported here provide empirical support for what, up to now, has been only theoretical claims about the importance of being responsive to student's needs.

This research should be viewed as the proper and major solution to ESP teaching at tertiary level. What we should aim at is a professionalism of ELT to undergraduates. Further elaboration and improvement would benefit all teachers and text-book writers who are deeply concerned with helping students develop discourse skills and strategies required in the increasingly multicultural and internationalized settings. It is incumbent on us not only to recognize the fact that we do such things but also to do them explicitly, carefully, and responsibly.

5.2.2.. Teaching business and law students how to write an English Disclaimer

The result points out the need of a more systematic approach to ESP teaching to business students in order for them to learn about the language of Disclaimers, as well as the skills and know-how of writing an English disclaimer. As writing plays an important role in many business transactions, students learning business principles are supposed to have a good skill of writing. However, most of them are not major in English and spend little time on language learning compared to students of foreign languages. Since their sentences making have not reached the high level, their lack of knowledge to construct a correct legal disclaimer text just make the situation worse. Therefore, they need some guidelines with the concept of disclaimers, how these texts should be written and how to arrange ideas in a single disclaimer. Seeing the significance of the apparent need among students of business major, the study put forward a website in order to give them more access to the effective online study and self-study. It can be said that this website a kind of practical application of the findings and results emerging from the research, which once again strengthens the important role of the study to the community. Designing for students, the website is directed to be eye attractive, vivid, informative, and diversified in terms of contents and exercises. After each part of introducing new knowledge is reinforcing practice with a variety of useful exercises. (The CD containing the website is enclosed at the end of the thesis)