

ANALYSIS OF LEGAL DISCOURSE IN CROSS-EXAMINATION QUESTIONINGS: ADAMA CITY CRIMINAL COURTROOMS, OROMIA REGIONAL STATE, ETHIOPIA

Ejarra Batu Balcha

Arsi University, College of Social Science, Humanities and Law, Boqoji, Ethiopia

E-Mail: nanatibatu@gmail.com

Abstract. *Recent studies of cross-examination questions focused on linguistic and nonlinguistic contexts in order to supplement the limitations of early studies which had focused on question-answer pair. Yet, there is a visible limitation of linguistic analysis of oral discourse based on original data which consequently reduces the credibility of the results. The analysis of this study is based on the authentic, naturally occurring courtroom cross-examination interaction of Adama City Criminal Courtrooms in order to fill the existing gap of performing a linguistic analysis of oral discourse using secondary data. The aim of the study is, therefore, to present the discursive strategies of cross-examination questioning forms and functions in their attempts to deconstruct persuasive testimony. In doing so, employing the cross-examination combative nature of courtroom interaction, the study focuses on the analysis of cross-examination question forms and functions from the pragma-dialectical discourse perspectives. The finding of the study suggests that the use of declarative question, tag question, and projection question forms are the lawyers' discursive strategies to control and dominate the language of the witnesses.*

Key words: *discursive strategies, cross-examination questions, tag questions, coercive, pragmatic*

1. INTRODUCTION

In the process of cross-examination questions/answers, minimizing pressurizing and coercive question forms are essential in an attempt to make the truth less jeopardized in court trial. This can be achieved by informing and alerting the cross-examining lawyers to the risks involved in such questioning forms so as to modify such pressurizing and coercive questionings (Gibbons, 2004). In this regard, as an applied (forensic) linguist (Shuy, 2006), it is sensible to make an effort in addressing such types of pressing courtroom cross-examining lawyer language-related problems in Adama Higher Criminal Court, to understand and investigate the extent to which such types of questionings can put (the truth at risk to social injustice) rephrase using authentic data. The study explores the discursive properties of both question forms and functions as cross-examining lawyer's attempt to deconstruct witnesses' testimony.

Based on the Drew's (1992) cross-examination combative nature of courtroom interaction, the paper demonstrates, according to Gibbons (2003, 2008), how the discursive strategies of lawyers' cross-examination questioning forms function to pressure and coerce the witnesses into testifying what they do not intend to, and as a result causes the evidence to be twisted and distorted for social injustice. Hale (2004, p. 31) asserts that the discourse and the pragmatic function of cross-examination by lawyers has the main purpose not to elicit

new information (information-seeking), but to discredit the previously elicited examination-in-chief's case. The cross-examining lawyer deconstructs a version of the same events to claim that the defendant is "not guilty, or is worthy of lenient treatment, or alternatively attempting to show that the prosecution's version has weaknesses which place it in "reasonable doubt" (Gibbons, 2007, p. 438). In a cross-examination session, the witness is pressurized and even coerced by the forms of questions that the lawyers construct. According to Gibbons (2007), the cross-examining lawyer concentrates a more "destroying the prosecution's case" (Gibbons, 2007, p. 439).

This is to emphasize that the more established preceding studies undoubtedly contribute to the discursive strategies of cross-examination questioning forms and functions. (However, my argumentation here is that these studies are unable of employing more authentic data or the number of both previous and recent courtroom cross-examination questioning studies, which based their linguistic analysis of oral discourse on original source, making them not proportional with the visible courtroom language-related problems of our time or unable to ascertain how such sort of courtroom language-related problems studied are providing a more comprehensive authenticity of them). More specifically and most significantly, this type of courtroom language-related problem, as far as my knowledge is concerned, is unexplored by academic research in my region either using the original or the secondary official data. This is, firstly, owing to the premature stage of such types of multidisciplinary fields of legal language studies in the country (Applied Linguistics). There has been virtually no study on courtroom language-related problems used in Oromia Regional State in general and Adama Higher Criminal Court in particular. Secondly, because of the limited conceptual and methodological approaches in linguistic analysis of courtroom oral discourse, the attention given to investigation of such types of courtroom language-related problem is neglected.

In this sense, it is considered delicate to make an effort into uncultivated area of language-related problems of legal settings in Adama Higher Criminal Court to investigate the linguistic problems that can put the truth at risk to social injustice. Carrying out courtroom linguistic analysis of oral discourse in the place where authentic audio recording is absent, reduces the credibility of the findings (Tkačuková, 2010). Therefore, the data source employed in this study is thought to be more credible even in filling the gap that exists in the more established studies (Cotterill, 2003; Heffer, 2005; Gibbons, 2003, 2008; Tkačuková, 2010). The courtroom language of Adama Higher Court trial is Afan Oromo. So, the judge, the lawyers and all other court communities speak Afan Oromo. Occasionally, it happened that some witnesses (as far as Adama City incorporates a number of different ethnic groups found in Ethiopia) used Amharic Language (the language of wider communication). On such occasions, the translator of the court translates Afan Oromo (of the judge and the lawyers) into Amharic Language (for the witnesses or defendants). So, the original data consist of both Afan Oromo and Amharic languages. Similarly, rather than using the secondary data source, this study presents an issue of authentic data which is absent in most similar previous studies from Adama Higher Criminal Court trial, where the study of courtroom language-related problem is entirely neglected, and where two languages – Afan Oromo and Amharic are used as courtroom languages. Using the real data from Adama Higher Criminal Court trial, the researcher ascertains how the mentioned courtroom language-related problems are widespread and how they victimize the truth, by analyzing the linguistic characteristics of destructive types in cross-examination questions.

2. AN OVERVIEW OF ETHIOPIAN CRIMINAL COURT PROCEDURES

With the formal consent of 1994, the new Ethiopian constitution went into effect in 1995. This 1995 Constitution replaced the nation's centralized unitary government with a federal republic based on a democratic form of government (Christophe, 2007) which consists of nine member states. In Ethiopia, law is created and passed by the country's federal legislative body, the House of People's Representatives (New York University, 2006). In spite of the fact that Ethiopia follows the civil law system, the witness examination criminal procedure, as that of French evidentiary law, follows the criminal law system (New York University, 2006, p. 51).

The Oromia Regional State is one of the nine member states in the federal government of Ethiopia (Christophe, 2007) from which the criminal law system is drawn. The New York University (2006) report notes that the Constitution directs the creation of three levels of state courts: the State Supreme Court, the High Court (or the Zonal Courts) which consists of both the civil and criminal court of which the criminal court is the focus area of this study, and the First Instance Court (or the Woreda Courts). In the Oromian Higher Court criminal procedure observed, the prosecution and defense present the evidence and question the witnesses after the judge's swearing-in and orientation/checking-in stages. Here, (a well established understanding of what happens) is that the two sides are attempting to construct competing versions of the same event or state (Bennett and Feldman, 1981).

Similarly, Gibbons (2008) also asserts that in the Common Law system, when lawyers are cross examining a hostile witness, they have to play a complex game, where they are attempting almost simultaneously to construct and support their version of events and attack the version of the other side. Gibbons (2008) argues that the purpose of constructing a particular version, strongly affects the social and informational relationships, causing them to differ substantially from those found in everyday conversation. The social relationship, rather than being roughly equal, is one of power asymmetry in that the lawyers have control of the questioning process and witnesses are obliged to reply. Lawyers are also in a position to pressure witnesses to agree with their version of events (Gibbons, 2008). These typical personal and information relationships have a significant impact on the nature of both questioning exchanges and the form of questions. In this study, I focused on the abovementioned issues; demonstrating Adama Higher Court spoken discourse of courtroom proceedings. In doing so, the power asymmetry (Linguistic Power Imbalance as it has been used in this particular study) that exists in the cross-examination institutionalized speakers of Adama Higher Court participants, the cross-examining lawyers and the witnesses, has been analyzed.

3. DATA ANALYSIS: DISCUSSIONS OF QUESTION FORMS USED AS CROSS-EXAMINERS' DISCURSIVE STRATEGIES

Drew's (1992) analysis of cross-examination illustrates the combative nature of courtroom interaction and analyses the way in which lawyers exploit the specific speech-exchange system of the courtroom to challenge versions of events presented by witnesses. It also helped to analyze cross-examination data in such a way that it can confirm an increasingly critical linguistic dimension to this effort.

The cross-examination questions adapted for the purpose of this study were based on Gibbons' (2003, 2008) cross-examination question forms and functions such as declarative

questions, tag questions, and projection questions. In doing so, the lawyers enable to exert pressure on witnesses to go along with their version of events (Gibbons, 2008, p. 120) where pressure on witnesses to agree is referred to as 'coercion' (Danet and Kermish, 1978). A broad description of types of questions in legal contexts is given in Gibbons (2003, pp. 102–107) and Gibbons (2008, pp. 115–130). So, in the analysis of question forms and functions of this section, I specially deal with this description as a source of secondary data in order to remain abreast of the established knowledge on each aspect.

Declarative question in the courtroom manifests power imbalance in such a way that it contains the lawyer's version and puts pressure on the witness to agree. The questions are formulated as direct statements, in declarative rather than interrogative form, and await the witness's agreement. In an instance which follows in Extract 31 below, the lawyer made it clear that he was providing his own version of events by saying "that is not my request", and was making a bald statement of his version for the witness's agreement, 'the victim has been hit when he was crossing the road' (turn 1). Here, the lawyer managed to successfully force the witness into agreement, 'Yes' (turn 2). This type of question may sometimes have a rising question intonation, making it more question like, as in Extract 32. In this particular extract, the lawyer of defense, made the declarative more question-like, by raising the intonation of the word in the question, OTHER... Such utterances are considered as interactive since a deictic term refers to the content of the witness's prior contribution. Looking at the nature of interactiveness, according to Gibbons (2008), there is a basic contrast between those contributions that interact with the content of witness contributions, and those that interact with the witness. This latter category encompasses non-questions and potentially indirect questions where the main clause relates directly to the witness's person (e.g. 'Feyisa didn't hold Yeshtila...?' in turn 1). But, the turn, as a whole, still involves the lawyer adding to the discourse space rather than adding onto what the witness has provided (see turn 1, "Feyisa didn't hold Yeshtila except snatching his hand away and left the room?" in Extract 34). The discursive implication is that Feyisa held the defendant, and the defendant fired to defend himself.

Tag question is the most important type of courtroom questioning known for its intimidating and coercive nature. Gibbons (2003: 101) says that tag questions are 'strengthening devices, which make the demand for compliance greater than that of a simple question' and so the tag form is 'more coercive' than simple polar questions. In this study the most significant forms of tag questions employed were the statement and the tag. In the form of a statement, the lawyer included his version of events (the information). In the form of a tag, the lawyer was exerting various forms of interactive pressure upon the witness (the social). This form of courtroom question is therefore a paradigm example of linguistic form matching pragmatic function (Gibbons, 2008). So, it has been found that most of the questions in cross-examination took the form of tags, and that there are many types of tags used for such purposes.

Gibbons (2008) identifies two types of modal tag questions (reverse polarity and same polarity). In this regard, reverse polarity tag questions were used to put pressure on a witness to agree. This was demonstrated in the tag "did you not", Extracts 35 and 37, "was + pronoun + not" in Extracts 36 and by "can't + agent" in Extract 38. In abstract 35, the examining lawyer manages to oblige the witness to agree, 'yes' with his version of event that the witness said 'it is about 48 birr' using reverse polarity tag, 'did you not?' In extract 36, turn 1, through the use of reverse tag-question 'wasn't it?', the examining lawyer pressurize the witness to agree 'yes' in turn 3 that the conflict was taken place in

their own compound. The reverse polarity tag “wasn’t you... (in Extract 38, turn 1), wasn’t this what you said?” in Extract 38, turn 3, challenges the witness’s claim whether he heard the mere sound or saw the actual event. In the same way, same polarity tag-questions were used to impose hesitation on the witness’s version of events. In Extract 39, cross-examination W1 “... isn’t it?” the lawyer used same polarity tag-question (isn’t it?) to distrust the witness’s previous answer.

The full form tag question contains hyper-explicit language (Gibbons, 2008). The full form of the verb used in the following extract is in the function of putting pressure on the witness to reply in a similar way, allowing no scope for partial disagreement (see extract 45 and 46). With the full form of the verb used in extract 45 (was that what you’re saying, turn 1), the cross-examining lawyer managed to convince the witness (based on the previous elicited witness’s testimony) that what he has actually testified before the court and testified before the lawyer was different. Using this form of tag-questions the lawyer pressurized the witness to discredit the evidence he gave to the judge, in the recent judge-witness question/answer check-up (orientation stage). Similarly, as that of extract 46, the cross-examining lawyer pressurized the witness to discredit the previously elicited evidence using (At that time, did you see when...turn 1), and so that the witness fully agreed that he didn’t see (I didn’t see at that time, turn, 2).

Projection questions contain verbal projections (reported speech) and mental projections (reported thought and belief) (Gibbons, 2008). He asserts that such types of questions were a principally efficient way of including a vast volume of information from the lawyer’s version of events. Based on their structure, they also might put high degrees of pressure for agreement upon witnesses. For example, in extract 61, within the verbal projection “you said, ...”, there is an assumption that the witness was committed to the truth of the core proposition (‘I was under the comodino from the time when the gun started firing, I got out after they left’), making it difficult to deny. Therefore, if the witness answers “No”, this denial is primarily a denial of saying this, but does not deny that he was under the comodino from the time when the gun started firing. The core information (he was under the comodino from the time when the gun started firing) is to some degree presupposed. In turn 1, “you said ...” presupposes that the witness has recounted how Yeshitila ordered him to leave the room saying that he could do nothing there since he was not their member, and his refusal to leave the room itself was very difficult to be denied. The basic form of the question in extract 63 is “... were they inside or at the back yard?” Once more the projection “you said that...” makes it hard to deny and the final positive agreement tag (“were they inside or at the back yard?” turn 1) places further pressure for agreement.

REFERENCES

- Bennett, W. L. & Feldman, M. S. (1981). *Reconstructing reality in the courtroom*. London: Tavistock Publications.
- Christophe, V.B. (2007). Ethiopia: Constitutional Protection Of Ethnic Minorities At The Regional Level. *Begium.afrika focus*, vol. 20, nr. 1-2, 2007, pp. 105-151
- Cotterill, J. (2003) *Language and Power in Court: A Linguistic Analysis of the OJ Simpson Trial*, Basingstoke: Palgrave Macmillan.

- Danet, B. & Kermish, N. C. (1978). Courtroom questioning: A sociolinguistic perspective. In L. N. Massery (ed.), *Psychology and Persuasion in Advocacy* 413–441. Washington DC: Association of Trial Lawyers of America, National College of Advocacy.
- Drew, P. (1992). “Contested Evidence in Courtroom Cross-Examination: The Case of a Trial for Rape.” In P. Drew and J. Heritage (eds) *Talk at Work*. Cambridge: Cambridge University Press.
- Gibbons, J. (2003). *Forensic Linguistics: An Introduction to Language in the Justice System*. Malden, Mass.; Oxford: Blackwell Pub. (2004). ‘Language and the Law’, in A. Davies and C. Elder, *The handbook of applied linguistics*(eds) Blackwell Publishing Ltd, 285-303 (2007). *Forensic Linguistics*. In M. Hellinger and A. Pauwels, *Handbook of Language and Communication: Diversity and Change*. Walter de Gruyter GmbH & Co. KG, D-10785 Berlin. VOL. 9, 429-458.
- Gibbons, J. (2008). ‘Questioning in common law criminal courts’. In J. Gibbons and M. Turell (eds), *Dimensions of forensic linguistics: The Netherlands*, John Benjamins Publishing Company. (pp. 115-130)
- Hale, S.,B. (2004). *The Discourse of Court Interpreting: Discourse practices of the law, the witness and the interpreter*. John Benjamins B.V.
- Heffer, C. (2005). *The Language of Jury Trial: A Corpus-Aided Analysis of Legal-Lay Discourse*, Basingstoke/New York: Palgrave Macmillan
- New York University (2006). *Guide to Foreign and International Legal Citations*. New York University. School of Law: *Journal of International Law and Politics*.
- Shuy, R.W. (2006). *Linguistics in the Courtroom: A Practical Guide*. Oxford: Oxford University Press.
- Tkacuková, T. (2010). *Lay People as Cross-Examiners: A Linguistic Analysis of the Libel Case McDonald’s Corporation v. Helen Steel and David Morris*. Masaryk University, Faculty of Arts Department of English and American Studies: Un-published PhD Dissertation