

II International Scientific & Practical Conference “**Multidimensional Translation: From Science to Arts**”, Translation and Interpreting Programme of Baltic International Academy, Latvian Association of Translators & Interpreters, 20-22 April, 2017

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Common Problematic Aspects of English Legal Texts & Methodology of Achieving Translation Equivalence in Target Language

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Abstract

Legal translation is considered as part of the technical translation in the field of law. Legal discourse is characterized by the presence of a wide-range terminology which is easy to people familiar with it and difficult to those who are unfamiliar with and with its unique lexical/syntactic features. Translators of legal-related material are expected to hold knowledge of the characteristics of such discourse and methods for achieving equivalence in the target language. This paper is to put focus on the common lexical and syntactic problematic aspects of English legal texts, and to spot light on the methodology of legal translation & process of achieving equivalence in target language, with special reference to functional equivalence being suggested by many theoreticians for reproducing the ‘legal effect’ in the target text while preserving the fidelity of the source. Text- foreignization /domestication strategies, the intersemiotic and intrasemiotic translation procedures and the principle of fidelity to the source legal text are some other aspects to be tackled.

Key words:

Legal texts – equivalence – translation strategies - foreignization – domestication - fidelity

Introduction:

Legal discourse is a specialized language that requires certain sets of habits. Translators are to keep in mind the sensivity and the critical consequences of performing any contextual or semantic alterations and translation mistakes. Since

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legal discourse is a real departure from our everyday language, it is worth to highlight the specific charactersitics related to legal language, in order to help translators from English to Arabic to, somehow, develop a textual model and the measurable knowledge and competencies necessary to perform the translation tasks effectvly.

1. Nature of Legal Translation:

Garzone (2000) highlights that legal translation has been described as a category that stands alone, this is mainly due to its impenetrable and complex nature that can lead to misunderstanding by non-expert translators. In this regard, Chromá (2004) states that legal translation requires special attention as it is primarily composed of abstract and specialized terms. These terms are deeply rooted in the source language’s domestic culture and intellectual heritage. Consequently, the process of translating legal texts involves the transfer of specific concepts between two remote legal systems with their own different system of referencing. Therefore, Farghal and Shunnaq (1999) argue that mistakes in translating any legal sentence in a given contract could result in disastrous consequences. According to them, legal translation is one of the complicated translations, as when translating a legal text a number of considerations should be taken into account. Translator’s focus is to be put on the context of the source language’s law system and the suitability for translating it to the TL. Therefore, it needs a professional competence as it depends on the juristic culture of the two languages. Any legal translator should have an outstanding of the two cultures. They further state that problematic areas in translating legal documents fall into three categories: syntax related problems, layout-related problems, and tenor-related problems. On the other hand, Abu-Ghazal (1996) presented a number of semantic and syntactic problems in the translation of legal text from English into Arabic. Abu-Ghazal detected a number of the linguistic and semantic problems facing translators in general, concluding that intense training in legal translation should be undertaken before practicing legal translation as a career.

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2. Classification of Legal Translation:

Harvey (2002) highlights that linguists such as: (Newmark 1981; Trosborg 1994; Sarcevic 1997, 2000, 2003) offered a number of classifications that define the framework of legal translation. Trosborg (1994:312) classifies legal contract texts into three types: directive, commissive and constitutive. She states that "the word constitutive is used to denote sentences used to explain or define expressions and terms in the contract or to supply information concerning the application of the statute". Harvey (2002) and Šarčević (2000) underpin Trosborg's quotation, indicating that legal texts are mostly informative, specialized, and provide readers with specific information. Additionally, Šarčević adds to the above classification the expressive type of legal texts. Šarčević (1997) assures that since legal texts regularly prescribe the rights and duties of each party and state how they should or should not behave, then states that the main function of such texts is 'normative'. Newmark (1981) agrees with Sarcevic in her classification, as he categories three legal text types according to the nature of their function. These three types that Newmark presented tend to match a text function: informative, expressive and evocative/operative. According to him, this is the case of documentary sources of law such as: laws/regulations, contracts, codes, treaties and conventions. Šarčević (1997) highlights that Legal texts can be divided into prescriptive and descriptive, regulatory and informative which include documents related to legislative texts, in other words "regulatory instruments containing rules of conduct or norms" (p:11),

It can be assumed that the legal translation activity covers the following aspects:

- Translation of contracts and contract amendments.
- Translations of laws, legislation and acts and their amendments.
- Translation of case decisions and court judgments.
- Translation of challenge proceedings and complaints.

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- Translation of power of attorney and property ownership.
- Translation of legal opinions and expert reports.

Common Lexical & Syntactic Problematic Aspects of English Legal Texts:

The English legal language has long been criticized for “its obscure/vague expressions and circumlocutions, long winded sentences, tortuous syntax and involved constructions, meaningless repetitions and archaisms” (Bhatia, 1994). Whereas (Garner,2002) considers several types of legal terminology as of “fancy words, vague words, euphemisms, timid phrases, empty dogmatism, and neologisms.”. The following are common lexical/syntactic aspects of English legal texts that are considered to be problematic to many translators:

4.1 Presence of French, Latin legal Terminology & Calqued Translations:

Legal terminology are made up of foreign words. Writing on the history of legal language, Crystal and Davy (1969) state that “ legal English has had to rub shoulders with, and sometimes give way to both French and Latin”. French borrowed terminology into legal English survived from the period when Anglo-Norman was the language of courts those days. Additionally, Latin was the formal language used for official documents. According to Blackstone (cited in Williams 1969:65), legal technical terms were “not capable of an English dress with any degree of seriousness”. Accordingly, till today, legal discourse is featured by its excessive presence of French and Latin terms with their original forms. Alcaraz & Brian (2002) highlights that the presence of French and Latin terms in legal discourse is because Latin was supported by the dominance of the Rome church, it was unavoidable for English law to escape such heavy impact of such language and subsequently the dominant power of the Roman law which was an official legal writing system being imposed over vast parts of Europe. Tiersma argues that Latin has also left expressions related to the names of cases and parties; for instance, in

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England the term for the crown in criminal case names is "Rex or Regina" (Tiersma 1999:27).

Below are some common Latin word/phrases:

Latin Legal Term	Meaning in English
Actus reus	A criminal Act
affidavit	A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it.
proviso	A condition or provision which is inserted in a deed, lease, mortgage, or contract
pari passu	By an equal progress
prima facie	A fact presumed to be true unless it is disapproved
per capita	Average per person
bona fide	In good faith; without fraud
status quo	The existing status of a thing in any given date

On the other hand, the French used by judges and lawyers has become a language exclusively designated to legal professions after the deterioration of the Anglo-French as a living language. Legal French was never comprehensible neither to their clients nor to ordinary French language speakers during those days. Moreover, legal French contained many terms that lacked any equivalence in English. Modern legal English contains common French terms such as (accounts payable/receivable), (attorney general), (court martial)... etc. Below are examples of English translations of French legal terms that have become part of the legal English language jargon:

English Jargon (Calqued Term)

action on the case
burden of proof
civil death
dead-hand

Original French Term

action sur le cas
onus probandi
mors civilis
mortmain

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friend of the court	amicus curiae
last will	ultima voluntas
law of the merchant	lex mercatoria
next friend	prochain ami
on the pain of	sur peine de
plead not guilty	plaider de rien culpable

3.2 Lexical Parallelism and Repetition of Lexical Items:

Parallelism is a form of structural harmony and giving two or more parts of one or more sentences a similar form to create a definite pattern. In Anglo-Saxon legal documents, parallelism was an important stylistic feature that have survived till now. According to Tiersma (1999) presents an example that witnesses utter for swear even now days: "the truth, the whole truth, and nothing but the truth". He argues that the tireless repetitions performed by lawyers and judges reflect “an oral folk tradition in which legal rules are expressed as sayings due to the ease of remembering a certain rhythm or rhyme” (ibid).

While substitution and ellipsis are common coherent devices in everyday English, it is non-existent in documented legal texts. Alternatively, lexical petitioner and linguistic redundancy are mostly adopted due to the fact that precision is one of the principal objectives of legal texts. Accordingly, there are no elliptic sentences in them. The main objective is to leave no room for misinterpretation, ambiguity and to ensure accuracy of legal expressions. Worthy to mention, that the repetition of lexical items in legal texts has highly promoted the absence of any anaphoric referencing, i.e (to avoid the use of personal pronouns, demonstrative adjectives and demonstrative pronouns). On the contrary, nouns are tirelessly being repeated instead. The reason behind such repetition in legal texts is because it is not always apparent which word in the text a certain pronoun refers to, that fact that legal documents do not tolerate, and the repetition is used in order to avoid such ambiguity. Halliday and Hassan (1976) argue that “ reiteration is a form of lexical cohesion which involves the repetition of a lexical item”.

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4.3 Use of Doublets and Triplets:

One of the lexical features of English legal language is the use of doublets and triplets. Doublets or collocations are synonyms or near synonyms used together while triplets are three synonyms used together. words are also generally arranged in special ways. According (Garner, 1989) “These words do not produce new words, but they augment and strengthen one another”. They are usually so all embracing and unambiguous that there can be no exceptions to the specific meaning intended. No room is left for misinterpretation.

Tiesma (1999: 13–15) cited in Cao (2007) argued that “ Anglo-Saxons made extensive use of alliteration & sound”. The presence of doublets and triples in legal languages is related to ‘preventative law’ concerns, that is, “to prevent the parties from having to litigate later on” (Dick 1985: 1) in Cao (2007). This aspect raises a question: should translators of legal texts translate all the words though they may mean the same? Below are Commonly used legal doublets and triplets that essentially have one meaning include (cited in Cao (2007: 89-90), and could be translated into a one word equivalent.

Common Legal Term Synonym collocation	Arabic Equivalent
Terms and conditions	الشروط
authorise and direct	بخول
bind and obligate	يلزم
deemed and considered	ينظر في
furnish and supply	يوفر
over and above	علاوة على
save and except	باستثناء

On the other hand, there is a number of doublets and triplets used in legal English that may hold different meanings in English legal language. Therefore, it would be advisable to translate these synonyms into separate words in the target language (Cao, 2007: 91).

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A good example is the doublet ‘devise and bequeath’ used in wills. According to (Bennion 2002: 1070): “Often in a will, a testator will state: ‘I devise and bequeath all my real and personal property to B’. If used strictly, the term ‘devise’ is appropriate only for real property while the term ‘bequeath’ is appropriate only for personal property. Accordingly, the testamentary disposition is read as if it were worded: ‘I devise all my real property, and bequeath all my personal property, to B’ (cited in Cao (2007:91). Accordingly, it is advisable for translators to translate them despite the time and effort it might take.

The following is a number of doublets that are translated in two/three word collocation in TL:

Common Legal Term Near synonymous Collocation	Arabic Equivalent
aid and abet	التشجيع والتحريض
breaking and entering	الدخول والإقتحام
final and conclusive	نهائي وحاسم
bribery and corruption	الرشوة والفساد
devise and bequeath	يهب ويعطي
hue and cry	الصراخ والعويل
keep and maintain	حفظ وصون
null and void	لاغ وباطل
peace and quiet	السلام والهدوء
goods and chattels	الممتلكات المنقول والثابتة
any and all	أي وكل
acknowledge and confess	يقر ويعترف
full and complete	تاما وكاملا
changes, variations and modifications	التغييرات والتحويلات والتعديلات
costs, charges and expenses	التكاليف والرسوم والنققات
documents, instruments and writings	الوثائق و الصكوك والمكاتبات
bear, sustain or suffer	يتحمل ويتكبد ويعاني
advice, opinion and direction	النصح والتوجيه والمشورة

4.4 Old & Archaic Language:

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The adoption of old and archaic English language is considered a ritual in the English legal discourse, as it is doomed to be a style symbol of such context. Alcaraz & Brian (2002) argue that using Archaisms done on purpose, in order to add a flavor of formality to it. Tiersma (1999) highlights that “legal language often strives toward great formality; it naturally gravitates towards archaic language”. The following are examples of some archaic terms:

Archaic Legal	Uncommon intended Meaning	Arabic Equivalent
‘an action’	law suit	دعوى قضائية
to alienate	transfer property	نقل ملكية
a counterpart	duplicate of document	نسخ مطابقة (طبف الأصل)
Executed	a signed contract	العقد الموقع
an infant	a minor	قاصر
an instrument	a legal document	وثيقة قانونية
A master	Employer	رب العمل
a party	a person contracting	أحد طرفي العقد
pleadings	documents filed with the trial court	مرافعات خطية
save	Except	باستثناء
serve	to deliver legal papers	إحالة وثائق قانونية
servant	Employee	موظف – عامل - أجير
without prejudice	without loss of any rights	عدم الإخلال

Bhatia (2010) argues that “.. traditional legal language is archaic legal language that is full of legalese, illogical word order because of Law French and Law Latin, complex grammatical structures, and sentences of excruciating length.”

Additionally, English legal discourse excessively uses special archaic adverbs, such as:

foresaid	hereinafter	whatsoever	thence	thereto
aforementioned	herein	whensoever	thenceforth	therein
Forthwith	hereof	wheresoever	thereafter	

4.5 Uncommon Use of the Modal Verb (Shall):

Another prominent feature of legal texts is the excessive use of the modal auxiliary ‘shall’. It is not just used as a marker of the future tense but mostly to express the imperative (used in the meaning of (obliged to...)). It is used to determine

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imposed legal rights and obligations, i.e. a form of abiding compulsory with no alternative. Trosborg (1994) argues that the modal verb (shall) has an imperative meaning in the legal English language, whereas, Garzone (2000) stresses that this modal verb may hold a performative meaning alternatively in legal texts as per the the context. Holves (2004) argues that whether ‘shall’ should be used in legal style or not, would be a matter of taste.

Worthy to mention that replacing the unpopular and old-fashion modal verb ‘shall’ by the simple present tense (be+ obliged to) would not change the meaning that imposes rights and obligations:

4.6 Uncommon Style of Word-Formation:

Legal discourse has a peculiar morphological word-forming characteristics. Such derived terminology are deemed to be uncommon in ordinary English. Stockwell and Donka (2001) state that over 80% of the total English vocabulary is borrowed from other languages and most of its words can be derived via affixation. The legal discourse tends to form uncommon nouns out of common verbs, by adding the ‘-or’ and ‘-ee’, such as: (inspector/inspectee), (survivor/survivee), (appointo/appointee) in which the opposite nature of the added suffixes is understood as per the use of alternative word endings. The following examples may illustrate:

Common Verb	Uncommon Derived Noun	Legal Semantic Referent
Assign	Assign <u>or</u>	a person from whom a property or a right is legally transferred.
	Assign <u>ee</u>	a person to whom a property or a right is legally transferred
transfer	Transfer <u>or</u>	a person from whom a property or the deed drawn from it is conveyed.
	Transfere <u>ee</u>	a person to whom a property or the deed drawn from it is conveyed
mortgage	Mortgag <u>or</u>	a debtor who gives his property in a mortgage
	mortgage <u>ee</u>	a creditor who receives a mortgage

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According to the above, it is noted how the ‘-or’ suffix which refers to the one (who gives) and ‘-ee’ suffix which refers to the (one who receives) are excessively exploited in English legal texts than in every-day English language use. Ellis (1997) highlights that knowledge in vocabulary is a “precondition for learners’ discourse comprehension”, the aspect that permits grammatical rules to be ‘patterned in the learners’ mind’. Thus translators can make use of their knowledge in morphological forms (prefixes and suffixes) in order to retrieve the meaning/translation of such uncommon derivations.

4.7 Nominalization:

Nominalization are the nouns being derived from verbs and which are often used instead of verbs. Chomsky defines nominalization as “a process by which a verb phrase is transformed into a nominal” (1968). Quirk (1985) supports this view and who considers nominalisation to be “a process of turning a verb or an adjective into a noun”. Whereas, Halliday (1985) presents a broader scope of nominalisation “as any element or group that can function as a noun or a noun group”.

It is noted that nominaloization is an integral feature in English legal texts that fact that makes its a highly nominal discourse. Nominalization in such texts is understood as a tool of condensation and clarity, thus the excessive occurrence of nominal phrases might cause a ambiguity in legal text interpretation. Bhatia views nominalization as “the third type of complex nominal phrases that is conventionally called nominalisation, and is overwhelmingly used in legislative provisions” (1994).

The following are some examples extracted from various legal texts:

Original Verb	Nominal Phrase replaced
consider	give consideration
to oppose	in opposition
contravene	to be in contravention

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Agree	to be in agreement
to arbitrate	to go on arbitration

4. Methodology of Legal Translation & Process of Achieving Equivalence:

Many scholars concentrated on translation methods adopted for the transfer of legal text from the target language to the second. A number of those scholars has put special focus on the functional equivalence translation technique.

Functional Equivalence & The Reproduction of the ‘Legal Effect’:

In the field of legal translation, many theoreticians suggest that functional equivalence in reproducing the ‘legal effect’ in the target text while preserving the fidelity of the source text. Peter Newmark (1988) describes functional equivalence as “a procedure that occupies the universal area between the SL and the TL”. He suggests the adoption of functional equivalence for official translation purposes, as according to him, it makes the target text faithful to the original source text while be comprehensible to target reader. He further states that when translating legal documents such as: contracts that are ‘concurrently valid’ in the target language, the translator is supposed to concentrate on a TT-oriented method, i.e. to focus a the communicative approach. Weisflog (1987) also supports formal equivalence, also described by him as ‘formal correspondence’. Šarčević (2000) classifies functional equivalence in legal texts in the three following groups: Near Equivalence (NE), Partial Equivalence (PE) and Non-Equivalence (NoE):

- a) **Near-equivalence (NE):** A type of equivalence that occurs when legal concepts of the (SL) and the (TL) have in common a great deal of primary and subsidiary characteristics. Below are examples of a number of legal English expressions and their near-equivalent expression in Arabic that carry the same meaning in both languages:

English Legal Expression	Equivalent Expression in Arabic
Civil Code	القانون المدني

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Power of Attorney	التوكيل العام
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- a) **Partial Equivalence (PE):** A type of equivalence that takes place when the the (SL) and the (TL) legal concepts are similar to some extent, and where differences can be identified and lexically expanded. Below are some legal terms that share a number of similarities with its (TL) equivalent but differ in legal content, terms and conditions and writ of execution :

English Legal Expression	Equivalent Expression in Arabic
Personal Income Tax	ضريبة الدخل الفردي
Maternity Leave	إجازة الوضع

- b) **Non-Equivalence (NoE):** A type of equivalence that takes place when rare or none of the important aspects of the (SL) and the (TL) concepts correspond, i.e The legal concept of the source system concept does not exist in the target legal tradition; subsequently, no functional equivalent in the target legal system could be retrieved. Below are some examples:

English Legal Expression	Equivalent Expression in Arabic
No Child Left Behind Act (NCLB)	قانون (عدم التخلي عن أي طفل)
Same-Sex Marriage Law	قانون زواج المثليين

Foreignization & Domestication of Legal Texts:

Wilss (1982) draws a distinction between foreignization and domestication of (TT):

The translator can either leave the writer in peace as much as possible or bring the reader to him, or he can leave the reader in peace as much as possible and bring the writer to him.

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‘Bringing the reader’ to the source text requires the (TT) reader to perform the translation within its original foreign context, whereas to ‘bring the writer to the reader’ means to domesticate the (ST) according to the context familiar to the (TT) readers and accordingly facilitating the process of text assimilation. In this regard, Koller (1979) supports text-foreignization strategies, insisting that full adaptation is an unacceptable translation method in legal translation, because creates semantic distortion. On the other hand, Cesana (1910: 188, sited in Šarčević, 2000) gives support to legal text foreignisation, proposing the use of loan words and neologisms and the render of new legal concepts, arguing that “it is fidelity to the original which counts, not the beauty or elegance of the target language”.

‘Intersemiotic’ and ‘Intrasemiotic’ Translation of Legal Texts:

Tomášek (1990) argues that translation of legal texts “is a procedure based on both linguistic and legal comparative approaches”. Tomášek advocates the view points that stress the importance of putting focus on the (TL), and categorized the translation process into ‘intersemiotic’ and ‘intrasemiotic’ (1991). According to him, intersemiotic translation is the translation of a legal text from the source language to the target language, while intrasemiotic translation is the transfer of information from the first language to the second semantic level of the source language, i.e. transfers to the legal metalanguage from the legal language.

Šarčević (2000) stresses that all strategies used in official translations must focus on one main principle that is fidelity to the (ST) and that the adequate translation strategy is the one that puts a differentiation between literary and non-literary texts, whereas she categorized legal texts as non-literary text, as it doesn’t required neither creativity nor hermeneutics in translation. Such type of non-literary text is known as special-purpose texts. Worthmentioning that Vermeer (1982, as viewed in Šarčević, 2000) suggests that it is important to that when selecting the most adequate strategy,

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to put in consideration the legal criteria, that is because legal context is the main factor that determines the meaning of legal texts.

Conclusion / Recommendation:

This paper spots light on the sensitive and complicated nature of Legal discourse, which is easy to people who are familiar with it and difficult to those who are unfamiliar with and with its unique lexical/syntactic feature. Many scholars concentrated on translation methods adopted for the transfer of legal text from the target language to the second. A number of those scholars has put special focus on the functional equivalence translation technique. Further studies are recommended in order to simplify difficulties faced in legal translation.

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