

Difficulties in Legal Translation With reference to English & Arabic

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Abstract

Legal translation is often treated as a specific category in its own right within non-literary translation and is described as “the ultimate linguistic challenge,” combining the inventiveness of literary translation with the terminological precision of the technical translation. Nonetheless, the primary purpose of legal translation is to recreate the SL content in the TL in such a manner as to achieve the identical meaning, intent and legal effect.

Each country has its own legal terminology (based on the particular legal *system* of that country), which will often be quite different even from the legal terminology of another country with the same language, so, unlike scientific or other technical terminology, legal translation is often more difficult than other types of technical translation because of the system-bound nature of legal terminology.

When it comes to legal translation, a translator is required to have an extensive knowledge of law and to understand local cultures and sociological nuances of those cultures in order to convey the message across sufficiently.

O. Introduction

Non literary text, in general, is concerned with information, facts and reality. It is about objects and based on precision, reason and is expected to fulfill a certain pragmatic function.

A Legal text is non literary, which is concerned with the field of law. The translation of law has played an integral part in the interaction among nations in history and is playing a greater role in our increasingly interconnected world today, but it poses some difficulties because the legal system is a highly culture-specific element.

The mistranslation of a passage in a contract, for example, could lead to lawsuits and loss of money, thus only professional translators

specializing in legal translation should translate legal documents and scholarly writings.

Integration between legal systems, coming out of globalization and the increase in international business relations and political and economic integration, made the demand for legal translations higher than ever.

In solving international legal problems, a lawyer will be dealing with words, and the accuracy of a written legal document depends largely on word selection, syntax and good sentence structure. Thus, the professional legal translator must be part linguist, part legal scholar and part detective, willing and able to search out and define legal concepts expressed in the source language of a document that may not even have an equivalent in the language or legal system of the target text.

1. Types of legal texts

A good legal translator knows that even within the legal field there are completely separate areas of law that require specific translation techniques: a contractual document has little in common with a will, or an administrative certificate as an example. The translator knows that he or she must consult not only a monolingual legal dictionary, but also a treatise regarding the subject matter, and those bilingual dictionaries, while useful, should be used with caution. Following are some areas of law that differ in lexical as well as terminological aspects:

1. Official documents: certificates of birth, death, marriage, divorce identity cards etc.
2. Documentation for education, profession or academic transcripts, etc.
3. Immigration documents
4. Property documents
5. Wills
6. Contracts
7. Witness statements
8. Trusts
9. Litigation documents
10. Court translation
11. Conventions

And many others which will not be dealt with due to space limitation.

Most forms of legal writing, and contracts in particular, seek to establish clearly defined rights and duties for certain individuals. It is essential to ensure precise correspondence of these rights and duties in the source text and in the translation, thus when translating a text within the field of law, the translator should keep the following in mind. The legal system of the source text (ST) is structured in a way that suits that culture and this is reflected in the legal language; similarly, the target text (TT) is to be read by someone who is familiar with the other legal systems (corresponding to the jurisdiction for which TT is prepared) and its language.

2. Legal Lexicon

Legal English lexicon differs to a great extent from ordinary one. No doubt that such vocabulary does not render legal language clearer, but unfortunately tougher, hard to understand without a considerable familiarity with the legal sphere.

It is recommended for translators to get accustomed to consulting specialized dictionaries whenever something in the context alerts them to a usage distinct from standard or everyday usage. Being unaware of this problem, one can take for granted that terms of this type have just a general meaning because purely technical terms are monosemic; that is, having one legal meaning and so posing no difficulty for the translator who can simply consult a bilingual dictionary, of course, not a standard dictionary but a specialized legal one, like :

<u>Source language</u>	<u>Target language</u>
Decree (n)	حكم/مرسوم
Mortgage (n)	رهن
Sub-letting	كراء (تاجير) من الباطن
Deem (v)	يعتبر أو يعد
Premises	العقار
Tenant	المكثري (المستاجر)
Lease (n)	إيجار/كراء
Hereinafter	فيما بعد
Landlord	المالك/المكري/المؤجر

However, semi-technical vocabulary is a more complex type of terms; they have one meaning or more than one in everyday language and another in the field of law (polysemic) Alcaraz & Brian (2002: 17). The following examples are terms of this type:

General meaning:

<u>Source language</u>	<u>Target language</u>
Assignment	مهمة، واجب
Maintenance	صيانة، محافظة على، إبقاء على
Consideration	تفكير، بحث، اعتبار، الخ
Title	اسم، عنوان، لقب

Legal meaning:

<u>Source language</u>	<u>Target language</u>
Assignment	تفويت العقد للغير
Maintenance	نفقة
Consideration	مقابل
Title	حق تملك أو سند تملك

The language used in legal and official documents has some common characteristics: it is highly stereotypical, conventionalized and conservative in nature, with a high proportion of set formulae (Zaro and Truman 1998: 77). In addition, it retains morphological, syntactical and lexical features that are no longer used in other types of texts. For instance, the first and second excerpts are taken from a power of attorney document, while the third one deals with a birth certificate:

- KNOW ALL MEN by the Presents that I, Edward J. Morrison, HEREBY APPOINT Eleanor Abercrombie, hereafter called my Attorney, to act for me in every respect as fully and effectually as I could act in person concerning all my present and future affairs.
- AND I HEREBY DECLARE that these presents shall be irrevocable for Twelve months from the date hereof and shall at all times be conclusively binding on me and my personal Representatives in favor of third parties.
- IN WITNESS whereof I have hereunto set my hand and affixed my seal this 23rd day of the month of March in the year of our Lord, One thousand, nine hundred and Ninety-eight.

The main aim of this style of language is to make very specific and precise statements, and to avoid wherever possible connotations and ambiguities, to such an extent that it frequently becomes reiterative and repetitive. Nevertheless, there are significant differences in terms of cultural contexts. The functionalist approaches in translating science lay great stress on the principle of cultural embeddedness of the source and the target languages and accordingly view translation as an intercultural transfer(Gambier 2004: 160). The translatability of legal texts directly depends on the relatedness of the legal systems underlying the translation. Therefore the communicating parties need to be well acquainted with the legal system(s) involved.

This is especially the case when using English as the language of communication, as the Anglo-American legal system, based essentially on common law differs substantially from continental law, to which most of European countries belong as well as most of Arab legal systems founded on the Islamic law and the French law. The nonequivalence of many legal concepts and terms pertaining to these systems thus has to be taken into consideration (Shiravi, 2004:7).

One of many noticeable features of English legal lexicon is the existence of legal French terms within English legal language. After the Norman Conquest in 1066, the language of the invaders gained an undeniable position in the legal sphere of England, bringing with it a wealth of legal French terminology (Crystal & Davy 1986: 208). As a case of illustration, the following terms are originally French:

- Contract, proposal, schedule, terms, conditions, policy, alias, quash and so on.

Like French terms, the existence of Latinisms within English legal language is also apparent because it was inevitable for English law to escape the influence of Latin which was supported by the power of the Roman church over Europe at that time, and also to its widespread use throughout this place of earth as a language of learning and literature. In addition to the incredible power of the Roman law which was a coherent written system, and had strength of an institution over a considerable area of Europe Alcaraz & Brian (2002: 5). Here are some Latin phrases and words in common use:

- Bona fide (good faith or in good faith)

- Res judicata (an issue adjudicated)
- Bes nova (a new thing; an undecided question of law)
- Actus reus (guilty act)
- Alibi (elsewhere, the fact or state of having been elsewhere when an offence was committed) (Garner, B. A: 2001)

Obviously this marks a great difficulty for a translator who is not an expert.

Tiersma (1999: 95) states that “*legal language often strives toward great formality, it naturally gravitates towards archaic language*”. This is the reason behind the considerable use of archaic legal terms in legal English language which gives a flavor of formality to the language to which they belong. Some lawyers prefer to use antique terms instead of new ones. For example, they use ‘imbibe’ as an alternative of ‘drink’, ‘inquire’ rather than ‘ask’, ‘peruse’ instead of ‘read’, ‘forthwith’ as a substitution of ‘right away’ or ‘at once’ and so on. (Examples are used by Alcaraz & Brian, 2002: 7).

There exist also some archaic adverbs, which are actually a mixture of deictic elements: ‘here’ ‘there’ and ‘where’ with certain prepositions: of, after, by, under etc as well as the use of the verb ‘witnesseth’ with the preservation of an ‘eth’ ending for the third person singular of the present tense as an alternative of the current morpheme ‘es’ ‘witnesses’ (ibid).

Here are some examples with their Arabic translations:

Source language	Target language
- The parties <i>hereto</i> agree as follow.	- تم اتفاق الطرفين بموجب هذا العقد على ما يلي.
- <i>Hereinafter</i> referred to as wife.	- المشار إليه فيما بعد في هذا العقد باسم الزوجة.

The more conservative legal terms are, the safer a legal document will be. In other words, this use of antiquated terminology is driven by the need to avoid troublesome changes as far as legal lexical meaning is concerned Tiersma (1999: 96).

The principle is that, “*what has been tested and found adequate is best not altered*” according to Crystal and Davy (1986: 213). Certain archaic words have actually acquired an authoritative interpretation over the years. So, altering them is an absolute risk.

Also, this ongoing use of old-fashioned diction is, on the other hand, a matter of convenience. That is, what was workable before can be workable again although such terms render comprehension difficult, and their unique compensation is seeking advice from lawyers as translators.

The following example shows another difficulty in translating legal documents:

- All such payments shall be made to Landlord at Landlord's address as set forth in the preamble to this Agreement on or before the due date and without demand.	- تدفع كل هذه الأقساط إلى المؤجر في عنوانه الموضح في ديباجة هذا العقد بتاريخ الاستحقاق أو قبله دون الأمر بالأداء.
- Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord.	- يمنع على المستأجر إجراء أي تغييرات بالمبنى أو تحسينات بالعقار أو إنشاء أي مبنى أو القيام بتحسينات على العقار دون موافقة خطية مسبقة من المؤجر.
- Husband shall pay to Wife spousal support in the sum of _____.	- يدفع الزوج للزوجة نفقة تقدر بقيمة _____.

Traditionally, the modal *shall*, in legal texts, carries an obligation or a duty as opposed to its common function: expressing futurity (Tiersma: 105). More importantly, Sabra (1995: 31) claims that any legal verb preceded by 'shall' is normally translated into Arabic in the present form. It poses a level of difficulty in both interpretation of clauses containing it and in the translation of such clauses. *Shall* is sometimes used in a way that is truly confusing and causes a dilemma for the translator to assume definitively whether the modal *shall* is being used for an obligation, futurity or a false imperative.

- Wife shall have the right to retain her married name or shall also have the right to return to her maiden or former name: _____.	- يحق للزوجة الإبقاء على اسم زواجها، ويحق لها أيضا العودة إلى اسمها السابق قبل الزواج: _____.
	- يتوفر الزوج في مسكن العائلة على

- Husband shall have the following rights of title and ownership in the family residence: _____.	حقوق الملكية و التملك من قبيل: _____.
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Legal language is highly concerned with the exactness of reference; hence its tendency toward lexical repetition, and therefore to functional redundancy. Draftsmen avoid the use of anaphoric devices or referential pronouns such as: the personal pronouns (he, she, it etc) or the demonstrative ones (this, that, etc), in addition to the verb 'to do' that may substitute a whole clause as in the following example, *He rents a car and so does his brother* (Sabra: 1995), example:

- <i>The Lessee shall pay to the Lessor <u>at the office of the Lessor.</u></i>	- يدفع المستأجر إلى المؤجر في مكتب المؤجر...
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Here, if the possessive pronoun 'his' is opted instead of the word 'Lessor' in the phrase 'at the office of the Lessor' would certainly create confusion and ambiguity. For example:

- <i>The Lessee shall pay to the Lessor <u>at his office.</u></i>	- يدفع المستأجر الى المؤجر في مكتبه.
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In this case, it would be confusing whether the intended office is the one of Lessee or that of the Lessor. Consequently, such substitutes may, in many cases, refer to a lexical item other than that intended by the writer. At least this feature of legal writing facilitates the task of the translator to know the exact meaning intended by the legal drafter. However, using anaphoric devices or referential pronouns would definitely increase ambiguity and confusion. Therefore, it will be difficult for the translator to decide precisely which word the pronoun is referring to.

When translating legal texts, it is commonly advocated to keep the same redundancy of the original text since it is a redundancy that is functional. So, the translator should ensure that the version proposed is without ambiguity as its original counterpart.

Alcaraz & Brian (2002: 9) explain that there is a common use of collocations in which synonyms or near- synonyms are combined in

pair “doublets” either nouns, verbs, adjectives or even prepositions. For example:

Source language	Target language
Made and enter	حرر
By and between	بين كل من
Lying and situated	الكائن
Terms and conditions	شروط
Covenants and obligations	التعهدات والالتزامات
Null and void	لاغيا وباطلا
In good order and repair	في حالة جيدة
Represents and warrants	يتعهد ويقر
Any and all	كل

This is merely a tradition adopted when drafting legal documents (Sabra: 36), but nowadays, drafters do not normally use such pairing of words as a distinction from simple style of expressions.

Another feature in English legal language which may be difficult for a translator of little practice in translating English legalese is the use of the words ‘the same’, ‘such’ and ‘said’ unusually:

The word ‘the same’ usually implies comparison to a similar object or person, but in legal use it refers to sameness of reference. (Tiersma: 88). For example:

- *The tenant shall pay all the taxes regularly levied and assessed against Premises and keep the same in repair.*

In this example, ‘the same’ refers to the word ‘Premises’. Also, word like ‘such’ means normally ‘that sort’ or ‘this sort’. Now, observe its use in the following legal context:

- *We conclude that the trial court’s order constituted an abuse of discretion in the procedural posture of this case which compels us to set aside such order.*

Tiersma suggests that the pronoun ‘it’ can conveniently substitute the phrase ‘the same’ (p. 91). Apparently, the phrase ‘such order’ signifies ‘this order’. So, here, *such* acts in the same way as the demonstrative pronoun ‘this’.

Concerning the function of the word *said* in legal drafting, it is used as an article or a demonstrative pronoun (Sabra: 43). To illustrate this, we include the following example:

- *Lessee promises to pay a deposit. Said deposit shall accrue interest at a rate of five percent per annum.*

Here, the word 'said' could be substituted by the article 'the' or the demonstrative pronoun 'this' with no loss of meaning. By the way the examples mentioned in this section are originally used by (Tiersma, 1999).

Conclusion:

Accurate legal translations can be delivered only by highly specialized translators who have a comprehensive working knowledge and experience in the legal industry. A legal translator not only translates from one language into another but also translates from one legal system into another and must understand local culture and have a compounded knowledge of the legal system in place in the country for which the translation is intended. It demands complete faithfulness to the source text and utmost precision in terminology, thus the translator is required to be an expert in order to perform an adequate intrasemiotic translation.

It can be said that the ultimate goal of legal translation is to produce parallel texts that will be interpreted and applied uniformly by the courts. In present-day multilingual society legal translation plays a key role as a communication mediator in international law. As Šarcevic aptly explains:

Since the success of an authenticated translation is measured by its interpretation and application in practice, it follows that perfect communication occurs when all parallel texts of a legal instrument are interpreted and applied by the courts in accordance with the uniform intent of the single instrument (Šarcevic, 2000: 5).

A good legal translator shall have extensive knowledge of the relevant legal terminology in both the source and target languages and be a specialist in a particular legal area, such as:

- International law
- Civil law,
- Corporate law,

- Property law,
- Tax and accounting law,
- Insurance law,
- Patent law and etc.

Successful legal translations must also meet the requirements of accuracy, confidentiality and punctuality.

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صعوبات الترجمة القانونية بالإشارة إلى اللغة الانكليزية والعربية

المستخلص

غالباً ما يتم التعامل مع الترجمة القانونية كنوع قائم بحد ذاته من أنواع الترجمة غير الأدبية. وتوصف بأنها (التحدي اللغوي الأصعب) كونها تجمع بين إبداع الترجمة الأدبية و دقة استخدام المصطلحات التقنية والفنية في الترجمة العلمية. إن الهدف الأساسي من وجود الترجمة القانونية هو نقل محتوى النص من اللغة ألام إلى اللغة المترجم إليها بطريقة يتحقق بواسطتها التطابق في المعنى والنية و التأثير القانوني.

إن لكل دولة مصطلحاتها القانونية الخاصة بها (وفقاً للنظام القانوني في ذلك البلد) والذي غالباً ما يكون مختلفاً حتى بالنسبة إلى دولة أخرى تستخدم نفس اللغة. تختلف المصطلحات القانونية عن العلمية وعن باقي أنواع المصطلحات التقنية والفنية الأخرى وعلى هذا الأساس تعتبر الترجمة القانونية أصعب من أنواع الترجمات التخصصية الأخرى. وهذا يعزى إلى طبيعة نظام المصطلحات القانونية التخصصي.

يجب على المترجم فيما يختص بالترجمة القانونية أن تكون لديه معرفة واسعة بالقانون وأن يكون على دراية بالثقافات المحلية و الفوارق الاجتماعية لهذه الثقافات كي يستطيع نقل المعنى المقصود بينها أثناء عملية الترجمة بكل كفاءة.