

## **Translating English Legal Lexical Features into Arabic: Challenges and Possibilities**

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### **Abstract**

The challenges of legal translation between English and Arabic are not sufficiently investigated despite the impact such challenges can have on the translation product. There is a huge volume of translation between English and Arabic for legal texts such as contracts of various types, wills, articles of association, lawsuits, to name but a few. Notwithstanding the pitfalls of translation between English and Arabic in general, translating legal texts poses certain challenges of critical implications. Such challenges can be attributed to the difference in the structure of the legal texts, types of legal texts, and, most importantly, the difference in the legal system between the Arab countries on the one hand and the English-speaking countries on the other. The present paper aims to discuss the lack of uniformity in legal translation, differences within the same legal system and the translator's lack of familiarity with legal terms. It also aims to highlight certain challenges such as the contextual meaning and connotative meaning.

**Keywords:** connotation and denotation, different legal systems, familiarity, uniformity

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**Introduction:**

The translation of legal texts can be a challenging task when translating between related languages and similar legal systems, let alone the dilemma of translating legal documents between Arabic and English. Words, being the basic lexical units of legal texts, play a crucial role in the legal language. In this context, Sarcevic (1997, p. 1) maintains that ‘Translation of legal texts leads to legal effects and may even induce peace or prompt a war.’ Mellinkoff (1963, p. 3) names the language used in legal texts as ‘*the language of law*.’ Legal language is used for specific purposes and functions where, as Sarcevic (1997, p. 133) explains, ‘the primary role of language in normative legal texts is to prescribe legal actions, the performance of which is intended to achieve a specific goal.’ Tiersma (2000, p. 49) contends that legal language follows the rules which generally govern English and diverges from ordinary speech far more than the technical language of any other profession. Legal texts have an informative function for the general reader and a directive one for a specific group of people (Sager 1993, p. 70 as cited in Sarcevic, 1997, p. 10). Arabic and English belong to two different linguistic, cultural and legal backgrounds which entails that such a difference ultimately leads to challenges arising from and relating to the interpretation and application of legal instruments, differences within the same legal system and translators’ familiarity with the legal terminology. The translators’ lack of knowledge of where the target text is to be used can also have an effect as in the case of translating محام into *lawyer* and *attorney* where both are synonyms in the USA and only the former is used to describe a person of a legal profession in the United Kingdom. The present paper aims to discuss the areas of difficulty in translating legal texts, equivalence and lexical challenges in legal translation, intra-system differences and, among other points, the lack of uniformity in the interpretation and application of legal instruments.

**Legal translation: sources of difficulty:**

Translation equivalence is the ultimate objective translators keenly seek to achieve. When translating legal documents, this objective can be impossible to accomplish, especially in a language pair like English and Arabic due to the striking differences which pose considerable challenges to legal translators. Sarcevic (1997, p. 235) says ‘Because of the inherent incongruency of the terminology of different legal systems, legal translators cannot be expected to use natural equivalents of the target legal system that are identical with their source terms at the conceptual level.’ She (1997) further explains that the differences in legal systems and culture can result in challenges to legal translators. Sarcevic believes that ‘Each national or municipal law ... constitutes an independent legal system with its own terminological apparatus, and underlying conceptual structure, its own rules of classification, sources of law, methodological approaches, and socio-economic principles’ (1997, p. 13). Yankova (2017) explains that ‘One of the most serious problems is when the semantic domains of legal terms in two or more legal systems do not correspond because the legal conceptualization of the systems differ.’

Cao (2007) discusses the sources of difficulty in translating legal texts and pointed out that such difficulty is attributed to different legal systems and laws, linguistic differences and cultural differences. It is the difference in the legal systems in the Arab world and the English-speaking countries which makes it difficult or even impossible to translate legal terms between this language pair. Societies have their own cultural and linguistic structures as well as legal concepts which are specific to each of them. Tetley (2000) says that the concept of legal system relates to the content and nature of law. Volker (2009) explains that legal English is related to the common law where concepts can be understood in the context of common law only. The legal Arabic, on the other hand, is usually linked to the two major sources of legislation: Quran and Sunnah. However, not all Arab countries rely mainly on Quran and Sunnah as the primary sources of legislation.

Another major source of difficulty in legal translation is the linguistic difference. White (1982, p. 423) believes that the legal discourse is 'invisible', a major problematic feature. He adds that 'the unstated conventions by which language operates' give rise to serious obstacles which are more complicated than vocabulary and sentence structure. Bhatia (1997) speaks about expectations concerning language use in legal contexts. Cao (2007, p. 25) says 'A basic linguistic difficulty in legal translation is the absence of equivalent terminology across different languages. This requires constant comparison between the legal systems of the source language (SL) and target language (TL).' Linguistic difficulties in legal translation are usually attributed to the different concepts used specifically in one legal system and are absent in another.

### **Equivalence and legal translation:**

Equivalence is a central concept in translation and an ultimate objective translators actively seek to achieve. Catford (1965, p. 21) says that 'the central problem of translation practice is that of finding TL equivalents.' Baker (1992) believes that linguistic and cultural aspects affect the concept of equivalence and make it relative. Pym (1992) says that equivalence is circular. Arabic and English are two distinct languages which entails that achieving equivalence can be difficult when translating general texts, let alone legal texts. This difficulty is mainly due to the linguistic and cultural difference.

Translating legal documents between Arabic and English is quite challenging due to the difference in the legal systems which is crystal clear in the context, say, of Saudi Arabia which adopts Sharia Law as its legal system. English terms used in common law may not have readily available equivalents in Arabic. Sarcevic (1997) argues that the legal concepts absent in the target language setting cannot be rendered. Legal language is linked to a particular legal system (Weisflog 1987). It is this difference in the legal system and legal terminology which makes the task of legal translators a challenge as the legal lexical items are culture and system specific. The meaning of any legal lexical concept is inherent in the language in which that concept is used. For example, divorce is found in varying cultures. However, there could be specific terms related to this concept in specific languages. Arabic, in the context of Sharia courts, lexicalizes different types of divorce. Let us consider the term *طلاق بائن بينونة كبرى*. This term is accessible to the Arabic reader but has no equivalence in English. Translating the term as *irrevocable divorce* sounds odd to the English-speaking readers.

**Legal translation: lexical challenges**

Legal English, referred to as legalese, is characterized by its unique lexical features. Cao (2007, p. 29) maintains that 'legal language is a highly specialised language.' Tiersma (2000, p. 1) says that 'Words are also a lawyer's most essential tools.' Hiltunen (1990) explains that adjectives in legal English texts are fairly scarce, imprecise and vague and that nouns are often abstract rather than concrete. Alcaraz and Hughes (2002, p. 14) stress the complexity of legal vocabulary and say 'The technicalities of legal vocabulary present a serious challenge to the translator or interpreter.' The vocabulary used in legal documents is 'a vocabulary of possibilities purportedly comprising a comprehensive system of meanings that are internal or latent within the lexicon itself' (Goodrich, 1987, p. 177).

**Archaic lexical items:**

English legal texts are characterized by the use of old vocabulary items (Alcaraz and Hughes 2002). These, as Hiltunen (1990) explains, could have been introduced to resolve ambiguity. Examples of these include: *aforesaid*, *hereby*, *hereinafter*, *hereof*, *hereto*, *therein*, *thereof*, *herewith*.

I **hereby** declare that the details furnished above.....

أعلن بموجب هذه الوثيقة أن التفاصيل أعلاه .....

..... ascertained as **aforesaid**

.... تم التأكد منها حسبما تقدم بيانه

... **hereinafter** referred to as ....

المشار إليها فيما بعد ب

The articles **hereof**

مواد هذه الاتفاقية/العقد/الوثيقة ...

The lease agreement attached **hereto**

عقد الإيجار المرفق

The contract and the articles contained **therein**

العقد والمواد الواردة فيه

*Notwithstanding*: which typically means *in spite of* can be confusing to translators. Consider the following example:

*Notwithstanding any other term or condition expressed or implied*

بصرف النظر عن أي شرط أو حكم آخر صريح أو ضمني نصت عليه هذه الإتفاقية

**Herewith** as in *we enclose herewith a letter*

نرفق طيه

**Word pairs:**

Danet (1984, p. 281) says that these are 'fixed in the mind as frozen expressions, typically irreversible.' Examples of such word pairs include: *aid and abet*, *cease and desist*, *rules and regulations*, *will and testament*. Consider the following different Arabic translations and the connotative implications of such difference.

## Example 1:

Those who **aid and abet** corruption offences shall be punished with the same penalty applicable to the perpetrator (UN)

يُعاقب من يساعد ويحرض على الفساد بنفس عقوبة الجاني.

## Example 2:

Anti-immigration policies aid and abet traffickers. (Motta and Saez, 2013, p. 229)

تؤدي سياسات مناهضة الهجرة إلى مساعدة المهربين وإغرائهم.

*Aid* is translated as يساعد (help, a verb) and مساعدة (help, a noun). *Abet* is translated as يحرض in example 1 and إغراء in example 2. The connotative meaning of يحرض in example 1 implies that the action leads to legal actions against the doer. إغراء (literally means temptation) in example 2 is a general word which denotes a possible legal action, unlike the certain legal actions denoted by the same ST word in example 1.

A **Cease and Desist** letter

رسالة للكف عن أداء فعل ما والإمتناع عن مباشرته لاحقاً

**Rules and regulations** are made to enforce the law

سنت القواعد واللوائح لإنفاذ القانون

A Last Will and Testament is an important legal document ...

تعتبر الوصية الأخيرة وثيقة قانونية هامة ....

**Latin and French lexical items:**

Haigh (2009, p. 4) explain that 'legal English owes a particular debt to French and Latin.' French words used in English legal texts include, but are not limited to, *property*, *estate*, *lease*, *tenant*, and *executor*. Some words of Latin origin include *adjacent* and *subscribe*.

**Formality:**

Tiersma (2000, p. 136) explains that 'The ... formality of legal language is thus closely related to the fact that legal language is predominantly written.' Examples of lexical items which reflect the high level of formality include *Contractor*, *Attorney* and *Devisee*. Names of legal documents also reflect formality such as *Warranty Deed*, *Real Estate Deed*, *Will*, and *Life Assignment Deed*. *His/her Imperial and Royal Majesty* and *His Highness* are examples of the formality of titles.

**Contextual meaning:**

Context plays a critical role in the translation of legal texts. Newmark (1991, p. 87) argues that '... some words are more context-dependent or bound than others.' Legal context can be linked to the cultural context (Ilynska & Marina 2016). Words in legal texts can reflect meanings which vary considerably from their common meanings such as the word *assignment* which generally refers to the work given as part of job or study. It could be translated as مهمة in *on a diplomatic assignment* مهمة دبلوماسية. In the legal context, *assignment* generally refers to transferring legal

rights held by a party (assignor) to another party (assignee). Another example is the word *issue* which, in relation to inheritance, means the *decedents heir* which means نسل المتوفى.

### Denotation and connotation in legal translation:

Hatim and Munday (2004, p. 35) explain Nida's two types of meaning: denotation 'which deals with the words as signs or symbols' and connotation which refers to 'the emotional reaction engendered in the reader by a word.' Alcaraz and Hughes (2002, p. 33) maintain that 'Not infrequently words that are ... technically transparent in one language turn out to be connotatively rich in another.' Let us consider the below example on the difference between denotative and connotative meaning cited in Alcaraz and Hughes (2002, p. 34):

### Breach, infringement, violation, contravention, transgression

What the above words have in common is the breaking of law or failure to comply with orders. Alcaraz and Hughes (2002) and Gove (1984) explain that *transgression* is more appropriately used with reference to the breach of a moral or religious code. They maintain that *violation* reflects deliberate breaking of a law; *breach* is common in civil law and *infringement* reflects failure to adhere to local by-laws. *Contravention* is a neutral term. Gove (1984) explains that *violation* reflects disregard of the law or rights of others.

Consider the different translations of *breach* in the following examples:

1. The test is a flagrant breach of the December 1991 North-South Denuclearization Declaration. (source)  
يعتبر الاختبار انتهاكا صريحا لإعلان نزع السلاح النووي في كوريا الشمالية والجنوبية الصادر في ديسمبر من عام 1991.
2. The main issue concerned the determination of the extent of compensation awarded for breach of contractual obligations. (source)  
تمثل محور النزاع في تحديد قيمة التعويض المستحق عن مخالفة الالتزامات التعاقدية.
3. The transfer would breach international commitments undertaken by Romania. (source)  
يشكل هذا النقل إخلالا بالالتزامات الدولية الدولية التي أخذتها رومانيا على عاتقها.

Although the words انتهاك *intihak* in example 1, مخالفة *mukhalafah* in example two and إخلال *ikhlah* in example three have similar meanings, they differ in their contextual usage. *Intihak* in Arabic is used when the breach is related to religious contexts. *Mukhalafah* is directly related to the breach itself and does not refer to religious contexts. *Ikhlah* denotes failure to comply with provisions of law.

Consider the different translations of *infringement* into Arabic:

1. We encourage our users to report instances of copyright infringement. (source)  
نحث مستخدمينا على الإبلاغ عن حالات انتهاك حقوق النشر.
2. Any infringement of the

أي مخالفة للقواعد

3. and punish the infringement of electoral rules. (source)

ومعاقبة التعدي على القواعد الانتخابية.

An example for *transgression* is:

instances of transgression of core protection

حالات تجاوز معايير الحماية الأساسية

### Intra-system differences

Husni and Newman (2015) state that the common law and the civil law are the two main legal systems in use today. The differences within one legal system make the task of translation challenging. For example, legislation in the USA is divided into Federal Law and State Law. Quebec has a French Civil Law which is not found in British Columbia. The Civil Law in Algeria, Morocco, Syria and Tunisia is influenced by the French law while Oman's legal system is affected by the English Common Law (Husni & Newman 2015). David and Brierley (1985, p. 19) explain that each system 'has a vocabulary to express concepts, its roles are arranged into categories, it has techniques for expressing rules and interpreting them.'

The task of legal translators becomes more challenging due to the differences which occur within a specific legal system, 'resulting in often dramatically varying terminologies relating to the legal profession, courts and areas of law' (Husni & Newman, 2015, p. 108). An example of terminological difference is the use of *lawyer*, *attorney*, *solicitor*, *barrister*, *advocate* and *counselor and counsel* in the UK and USA. All these words can be rendered into Arabic as محام (Husni & Newman 2015). The said words are not synonyms and therefore can have implications if wrongly used in a certain legal system. While *lawyer* and *attorney* (law) are synonyms in the USA, only *lawyer* is used in UK in the same sense. In the UK, *attorney* refers someone acting on behalf of another person.

The difference between *solicitor* and *barrister* in the UK and Australia is unknown in the USA. Day and Krois-Lindner (2008, p. 18) explain that in England, Canada and New Zealand, 'there has traditionally been a contrast between *solicitors* (lawyers who advise clients) and *barristers* (lawyers who advocate in a legal hearing)'. *Advocate* is the generic term in Scotland. *Counsel* occurs in *Queen's Counsel* and denotes a senior barrister, with *counselor* being synonymous with *lawyer* (Husni & Newman, 2015, p. 109). In the context of the legal system in the Arab countries, the word عدل is used in Morocco, Algeria and Tunisia. It refers to a *qadi's* (judge) assistant performing the duties of a notary public in Europe.

Adding to the aforementioned, the terms used to refer to courts and their structure. Husni and Newman (2015, p. 109) provided a table (Table 3.1) to show the difference between the hierarchical structure of courts in different English-speaking countries. The table shows the difference, for example, between courts in Canada and USA as follows:

Canada: Supreme Court, Federal Court of Appeal, Federal Court, Provincial/Territorial Court.

USA: Supreme Court, State Supreme Courts, District Court, Country Courts.

Equally challenging are the terms referring to legislative institutions in the Arab countries. مجلس النواب is translated as *Council of Representatives* in Bahrain and Iraq, *House of Representatives* in Jordan, Morocco and Yemen, *National Assembly* in Lebanon, *Chamber of Deputies* in Tunisia, *General People's Congress* in Libya and *People's Assembly* in Egypt and Syria.

#### Translator's familiarity with legal terminology:

Familiarity with legal terminology plays a major role in translating legal documents between English and Arabic. That said, replacing a term with another could lead to confusion as some Arab countries use different terms or names of courts. Table 3.3 from Husni and Newman (2015, p. 115) reflects the variance in the use of some basic legal term.

Translation/equivalent	Egypt	Morocco	Syria	Tunisia
Preamble	مقدمة	توطئة	مقدمة	توطئة
Chapter/part	باب	باب	باب	باب
Section/chapter	فصل	قسم	فصل	فصل
Article	مادة	فصل	مادة	مادة
Paragraph	فقرة	فقرة	فقرة	فقرة
Clause/subsection	بند	بند	بند	بند

The table is self-explanatory. Looking at the translation of *chapter* and *article* in Egypt and Morocco helps in understanding the implication of using different terminology for the same English ST word. *Chapter* is translated as فصل and قسم in Egypt and Morocco respectively while *article* is translated as مادة and فصل. The difference lies in that the Egyptian law deals with فصل as a main heading and مادة as a subheading thereunder. The Moroccan law deals with فصل as a subheading. Such consideration should be taken into account when translating the English ST term in different Arab countries.

Trosborg (1997, p. 156) says 'The translation of legal texts presupposes familiarity with specialized terminology... The distinctive lexical features of legal vocabulary must be part of the translation competence of the legal translator.' She maintains that different concepts which result from the difference in legal systems must be explained. Smith (1995, p. 181 quoted in Bhatia et al., 2008, p. 305) identifies 'three prerequisites for the successful translation of legal texts: (a) a basic knowledge of respective legal systems, (b) familiarity with the relevant terminology, and (c) competence in target language's specific legal style of writing.' Translators must acquaint themselves with the legal concepts and terms in the SL and TL. Ahmad and Rogers (2007) say:

Translation of legal texts should not be done without quite an extensive knowledge of the respective legal topic in both the SL and the TL, i.e. the knowledge of concepts, terms denoting the concepts, sentence patterns visualizing the information, genre classification of the text, and the knowledge of legal culture.( p. 449)

Commenting on Laura Nader's article entitled *The Unspoken Language of Law*, Durant and Leung (2018) say:

In claiming that there is to this extent a risk of deception inherent in the core terminology of legal discourse, Nader's opening essay to the volume argues that justice is denied on numerous occasions in the United States because what needs to be said is left unsaid. (p. 19)

The problem which results from unfamiliarity with legal terms may lead to undesirable results the least effect of which would be oddness in the TL. Translating *preamble* as *توطئة* for an Egyptian or Syrian reader reflects that the translator is not familiar with how a term should be translated to the readers of a specific country. *مجلس النواب* is translated as *Council of Representatives* in Iraq and Bahrain and *House of Representatives* in Jordan, Morocco and Yemen. This requires a careful consideration as using one term in the place of another may lead to confusion.

### **Uniformity of interpretation and application:**

The importance of achieving equal meaning in parallel legal texts was highlighted in Article 33 (3) of Vienna Convention on the Law of Treaties. Hardy (1962) explains that lawyers are of the opinion that equal meaning in a legal text and its translation is difficult to achieve. Translators may not achieve equal meaning in legal texts and their translations; however, they are expected to achieve equal legal effect. Producing a text leading to the same results necessitates that the translator must 'understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have, and how to achieve that legal effect in the other language' (Schroth, 1986, p. 56). Equal meaning is a presumption for equal effect and both are a presumption of equal intent. Therefore, translators 'should strive to produce a text that expresses the intended meaning and achieves the intended legal effects in practice' (Sarcevic 2000). Translators must seek to understand the ST but avoid interpreting it in the legal sense given that their task is to convey what the ST says and not what translators believe the ST out to say. To give an example on the lack of uniformity in legal interpretation, let us consider the following two examples in Baaij (2018, pp. 38-39) who says that 'the cooling-off periods in the Doorstep Selling and 1994 Timeshare Directives were formulated as minimum periods.' The English version of Article 5(1) of the Doorstep Selling Directive referred to the period as '*not less than seven days*' while Article 6(1) of the Distance Contracts Directive referred to the same as '*at least seven working days*.' Baaij explains that such difference made the EU Member States 'adopt different durations of the cooling-off periods' which can lead to legal barrier preventing EU member states from conducting business among themselves.

The incompatibility of legal systems is the most significant challenge to the uniformity of the interpretation and application of legal documents. Sarcevic (2000) explains that when the source and target legal systems are similar as in the case with Switzerland and Finland, achieving uniformity in interpretation and application becomes an easy task. The major difficulty arises in the case of two different legal systems as in the Sharia law and civil law with the latter being different among the Arab countries. For instance, divorce procedures are different among the Arab countries due to the variations in the civil legal system. Taking an example on divorce cases, we find that Tunisia has recently granted women the right to divorce themselves. Jordan imprisons those who divorce their wives outside the court while the Tunisian law stipulates that divorce takes

place at the court only. This lack of uniformity within the legal system poses a significant challenge to the interpretation and application of legal documents such as those related to divorce.

### Conclusion:

A number of factors can pose significant challenges to the translation of legal texts. These include, but are not limited to, lexical features, connotative meaning, contextual meaning, intra-system difference, translators' familiarity with legal terminology and lack of uniformity between legal documents in different legal systems. The intra-system differences can affect the whole process of translating legal texts as systems represent the national laws which differ from state to state as within the US or country to country as in USA and UK. Translators may not be aware of the use of different legal terminology in specific legal systems and consequently render translations which considerably differ from the meaning of certain ST terms. An example of this is the translation of the word محامي as *attorney* in the UK where the word means someone acting on behalf of another person rather than a *lawyer* which reflects a legal background and profession. In the context of this paper, the issue of uniformity of interpretation and application of legal instruments between English and Arabic is undoubtedly impossible given the disparity of the legal systems, terminology and place of applications of laws.

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