

# Legal Translation: Facile or Arduous?

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## Abstract

*Legal translation is considered as one of the most challenging fields of translation. Legal language inherent to the field and the differences in legal practices combined with the respective cultures create a conundrum to the translator. The study focuses on problems encountered by translators during the process of translating legal documents such as affidavits, judgments, deeds, and law reports from English to Sinhalese and vice versa. A comparative analysis of selected texts of law and their translations was conducted to discern the problems of translation. Further, informal discussions with professionals involved in the field of legal translation were carried out to augment the outcome. The garnered data were classified into three subcategories as Syntactic, Semantic and Cultural. Under each category, a plethora of difficulties were identified. Unusual sentence structures, word order, modal verbs are few problems recognized under the syntactic category whilst semantic issues included terminology, wordiness, redundancy, loan words, neologisms and the lack of an established terminology. The culture entwined with the legal system of the respective country or community was also identified as an area of asperity due to the differences in traditions, norms, faiths and doctrines.*

## Introduction

The significance of translation on everyday lives has substantially grown since the worldwide integration of nations and global interaction proliferation the proliferation of global interaction. The extensively

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multidimensional phenomena aids in constructive communication between individuals to pluralistic nations within the globalized setting. Generally, translation involves rendering a written text from a source language to its' its equivalent in the target language. Edmond Cary defines translation as a “process which attempts to establish equivalents between two texts expressed in two different languages. These equivalents are, by definition, always dependent on the nature of the two texts, on their objectives, on the relationship between the two cultures involved and their moral, intellectual and emotional conditions”.<sup>1</sup>As the definition suggests, achieving equivalence in translation has become a daunting prospect for translators.

One of the most demanded types of translations in the field of translation involves translating legal documents. Legal documentation has become part and parcel of each individual's life, for from birth to death and every action in between involves legal steps, thus making it an integral share of everyday life. Unlike most other disciplines, legal actions are recorded and documented in a language inherent to the subject field. Peter Tiersma in the paper titled ‘The nature of Legal Language’ states that the Legal language is a product of its history.<sup>2</sup>

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1 Anthony Pym and Nune Ayvazyan, 'The Case of The Missing Russian Translation Theories' (2014) 8 Translation Studies  
<<https://www.researchgate.net/Anthony2/publications/276527825>> accessed 5 October 2020.

2 Peter Tiersma, 'The Nature Of Legal Language' (*LANGUAGE and LAW*)  
<<https://www.languageandlaw.org/NATURE.HTM>> accessed 1 October 2020.

The Anglo-Saxons of the west pioneered in constructing a distinctive legal language of which the following lexicons survived to date and are still in vogue: *Bequeath, Goods, Guilt, Manslaughter, Murder, Oath, Right, Sheriff, Steal, Swear, Theft, Thief, Ward, Witness, and Writ*. Besides the vocabulary, alliteration is a remnant characteristic of Anglo- Saxons which is widely employed in legal parlance. For instance, ‘to have and to hold’, ‘rest, residue and remainder’, and ‘any and all and each and every’ appear in legal texts in abundance. Other than the impact of Anglo- Saxons, the influence of Latin derivatives could also be succinctly discerned in legalese. The very practice of employing Latin ‘*versus*’ instead of ‘against’ in case names could be traced to Latin origins. Scandinavians left another profound and persisting influence on the English legal language. The word ‘law’ itself could be traced to the Norse word for ‘lay’, which interprets as ‘that which is laid down’. Furthermore, the terms such as ‘attorney’, ‘bar’, ‘defendant’, ‘plaintiff’, ‘plea’ and ‘verdict’ were coined according to the French grammars and are seen in almost every legal context.<sup>3</sup>A combination of facts decide the legal language formation and evolution: official languages of the states, political, economic situations, and the conflicts amongst social classes prevalent during such times.

The legal system in Sri Lanka that has been moulded to its existing model is influenced by many reasons. According to Aquinas V. Tambimuttu, “the ethnic and religious

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3 *ibid.*

diversity of the nation, and also its colonial history, have a direct bearing on aspects of the legal system in Sri Lanka”.<sup>4</sup> The mixed legal system of Sri Lanka is a culmination of linguistic, cultural, and religious diversity discerned within the island and the invasions from the West. The conquest of Maritime Provinces of the island by the occidental nations could be considered the initial step towards establishing a legal system in Ceylon. The Dutch, who succeeded the Portuguese in the seizure of coastal areas, were avant-garde introducing a legal system to Ceylon, the Roman-Dutch law. “Roman-Dutch law has withstood many a tide of legal and political changes to remain as the foundation of Sri Lanka’s general and common law”. Concurrent to the well- structured Roman-Dutch law, the Dutch attempted to codify the customary laws subsisting amongst ethnic groups. For instance, ‘*Thesawalami*’, the laws and customs practiced by the Tamil populace of the North, was codified in 1707. The British, pioneers in establishing a unitary system of administration and justice in Ceylon, however, continued to employ the existing laws granting prominent status to the Roman –Dutch law. Thus, the legal system in Sri Lanka is a conglomeration of Sinhalese law, Buddhist law, Hindu law, Tesawalami law, Islamic law, Mukkuwa law, Roman-Dutch and English law. H. W. Tambiah describes the intrinsic nature of the Sri Lankan law as follows:

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4 Aquinas V Tambimuttu, 'Sri Lanka: Legal Research And Legal System - Globalex'(Nyulawglobal.org,2009)  
<[https://www.nyulawglobal.org/globalex/Sri\\_Lanka.html](https://www.nyulawglobal.org/globalex/Sri_Lanka.html)> accessed 29 September 2020.

In Sri Lanka, there are five systems of private law. The Roman –Dutch law, as modified by statutes, and interpreted by the courts, is the general law of the land. English common law applies to commercial contracts and commercial property and has been tacitly accepted in many matters. English law was also introduced by statute and, as such, forms that statutory law of the land. The Thesawalamai is both a personal and local law... Similarly, Kandyan law applies to the Kandyan Sinhalese, and the Muslim laws, to the Muslims... in [matters relating to] marriage, divorce, [alimony] and inheritance. Private law governs issues between individuals. It consists of the law of persons, property, obligations, and delicts or torts.<sup>5</sup>

The evolution of the legal system of Sri Lanka adds a few significant as well as inherent features to the language of the legal practice of the island. Although initial adaptation was of foreign nature, the long-standing history of continuation combined with the native features born of the ethnic and cultural diversity has culminated in a legal language exhibiting traits of both localization and foreignization. The natural elements create a subtle yet indomitable challenge to the translator. Hence, translating legal documents, for example, from a Birth Certificate to End-of-Life plans, create a myriad of issues for legal translators. Hence, the study focuses on the problems encountered by translators when translating documents

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<sup>5</sup> H.W. Tambiah, 'Sri Lanka', *Encyclopedia of Comparative Law: National Reports* (MartinusNijhoff Publishers 1987).

from English to Sinhalese and vice versa.

## **Methodology**

As the present study attempts to identify the problems encountered by translators of legal documents, a content analysis of selected texts such as Affidavits, Deeds, Law Reports and their respective translations was conducted to identify the areas of difficulty. Informal conversations with professionals involved in legal translation was carried out to determine their perspectives on the problems encountered in legal translation and augment the outcome of the study.

## **Results and Discussion**

The information garnered through the comparative analysis of legal documents and their respective translations provides ample instances of difficulties encountered by translators during translating legal texts and associated documents. For a comprehensive outlook of the problems, the problems are classified and discussed under three different study categories. The subcategories are **syntactic**, **semantic**, and **cultural** differences.

### **Difficulties encountered in Syntactic Level**

Although an infinite number of words exist to express our thoughts and opinions, only a limited set of orders exist in a particular language to produce accepted sentences and utterances. The scope of syntax focuses on the rules,

principles, and procedures that govern a sentence structure. In other words, syntax prioritizes the word order and how a sequel of words is connected in an efficient way to make a meaningful sentence.<sup>6</sup>

One of the biggest concerns a translator has to face in legal translation is the unique and atypical sentence structure followed in legal texts. The sentences in legal texts are characteristic of long and intrinsic word orders with few phrases embedded into one sentence. For instance, the residuary clause extracted verbatim from an individual will be stated as follows:

I give, devise and bequeath all of the rest, residue and remainder of my property which I may own at the time of my death, real, personal and mixed, of whatsoever kind and nature and whatsoever situate, including all, property which I may acquire or to which I may become entitled after the execution of this will, in equal shares, absolutely and forever, to ARCHIE HOOVER, LUCY HOOVER, his wife, and ARCHIBALD HOOVER, per capita, to any of them living ninety (90) days after my death.<sup>7</sup>

If the sentence with its numerous phrases and clauses is surmised, in its entirety explains ‘I give the rest of my estate in equal shares to Archie Hoover, Lucy Hoover, and Archibald Hoover, assuming they survive me by at least 90 days’. Hence, it is evident that the construction of legal sentences is much more different, inundated with a writing

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6 Noam Chomsky, *Syntactic Structures* (2015).

7 Tiersma (n2).

style compromising intricate patterns inherent to the legalese. In transferring such sentences, the translator has to overcome the elaborate surface sentence structure and complex nature. However, at the same time, maintaining coherence throughout the translation, sans any astray is significant in dealing with sentences of such intricate nature. For example, if the translator is translating a sentence from a murder report describing the incident, despite the complicated nature of the text, the translator should be consistent in the order of actions as of the words.

Apart from these phrases and clauses, a distinctive feature of the legal language is complicated –prepositional phrases.

According to Bhatia, complex prepositional phrases follow the grammatical structure P.N.P. (Preposition + Noun + Preposition). ‘By virtue of’, ‘in accordance with’, ‘for the purpose of’ could be given as examples.<sup>8</sup> In translating the aforementioned clusters to the target language, the translator faces the dilemma of opting for a verb or verb(s) in the target language to transfer the precise meaning.

Furthermore, almost all the legal texts are compiled in Passive voice. Stanojevic claims that “Legal drafters instinctively stick to it, so both laws and court decisions generally contain a verb in the passive, especially when obligation or condition is imposed. They tend to create the

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8 BourasAmel and Zouari A Ahmed, 'Difficulties Of Achieving Terminological Equivalence In Legal Translation' (University of KasdiMerbha Ouargla 2014).



impression that such rules are infallible as they occur without the influence of the human agent”.<sup>9</sup> Hence, mostly passive voice is employed to add an impersonal and formal note to the tone of the text. In translating the text, the translator must stick with the source text sentence pattern and continue, although sentences written in indirect(passive) are challenging than the active.

Using formal words is another striking lexical feature in Legal English which a translator has to spend consider. According to Malinkoff (1963), the frequent use of the ‘formal words’ was initially done for completeness and perfectness. Examples for these Modal verbs include; “shall” over “will”. “liable” for “responsible” as well as “deem” instead of “consider”.<sup>10</sup>In such instances, the translator has to be cautious with the placement of such modal verbs, the role, and their tenses.

### **Difficulties encountered in Semantic Level**

Whereas syntax deals with the proper sequence of wording, semantics concentrate on the meanings of the linguistic units. In other words, from the form to the meaning. Each and every notion and nuance behind units formulating logical sentences are examined under study field of semantics. The analysed data of the study indicates that the semantic aspects of the legal texts generate problems of much higher magnitude to the legal translator.

Although it is near impossible to achieve equivalence in

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9 Ibid

10 Ibid

translation, a translator attempts to reach word for word-level equivalence in translation. In achieving the meaning–balance in legal translation, one of the gaps translators has to bridge is finding functional and lexical equivalences in the target language, which can transfer the notion of the source text without any distortion to its meaning. According to the analysis, apropos to this, the problems translators encounter includes translating technical words, inability to use synonyms, contextual matters, loanwords, neologisms, and the lack of an established terminology.

Legal language consists of jargon inherent to and confined within legal texts. M. Teresa Cabre defines terminology; “as a discipline, the terminology is a subject which is concerned with specialized terms; as a practice, it is the set of principles oriented toward term compilation; finally, as a product, it is the set of terms from a given subject field”.<sup>11</sup>Therefore, in translating technical terms, the translator should be aware of the conceptual as well as the referential meaning it generates within the source text, and following that, he/she has to select the precise term from the target language.

In selecting the best possible terminology, the inability to employ synonyms is another issue the translator has to overcome. In a literary translation, the translator can prefer

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11 Nematullah Shomoossi, 'Problems in The Translation of Legal Terms From Persian Into English' [2011] The International Journal - Language Society and Culture <<https://www.researchgate.net/publications/2688133331>> accessed 2 October 2020.

any appropriate word as he deems fit. However, this practice could not be executed in the domain of legal translation. For instance, although there is a myriad of synonyms available for the terms ‘husband and wife’, or the term ‘innocent’, the translator has to employ the exact term employed in the legal jargon of the target language.

Furthermore, the translator must be aware of the contextual meaning in searching for the equivalents in the target language. Contextual meaning refers to the circumstances which create the setting for the action to take place. For instance, the word ‘bar’, in a corpus, signifies few different meanings. In daily usage, a bar refers to an inn or a pub where drinks are served. However, in the legal jargon — the term implicates a group of lawyers that has a separate, specific term in the target language. Likewise, ‘bench’ has quite a few different meanings in the legal context, such as a metonym to indicate the judiciary members separately, while in common parlance, ‘bench’ is a wooden chair or only a piece of furniture.

On the other hand, English legal texts are abundant in loan words or borrowings from different languages, which have influenced their legal language formation. It contains an extensive account of foreign words, notably, words of Latin and French origin. For example, Latin borrowings such as ‘*Res judicata*’, ‘*Bona fide*’ and ‘*Mala fide*’ as well as the French derivation of suffix ‘*ee*’ denoting an individual as the receiver of something, i.e. “lessee” meaning “the person leased to” could be seen in legal texts. Without the competence of these foreign languages, a translator has to overcome the conundrum of finding the exact technical

meaning within the target language.

Another problem encountered by translators involved in legal translation as of the present study is the lack of established vocabulary. In such instances, the most noticeable feature is that the vocabulary is not up to date. Hence the translator must refer to multiple sources and persons before choosing a defined equivalent in the target language turning the translation process into a laborious and arduous activity.

### **Difficulties encountered in Cultural Level**

From the meals prepared to enrich one's taste palate to clothing donned, social institutions, and communication styles —

culture is entwined with the very existence of human beings. Christina De Rossi interprets 'culture' as follows: "Culture encompasses religion, food, what we wear, how we wear it, our language, marriage, and music, what we believe is right or wrong, how we sit at the table, how we greet visitors, how we behave with loved ones, and a million other things".<sup>12</sup>A culture reflects characteristics inherent to a respective community and is specific to the particular community. Newmark defined culture as "the way of life and its manifestations that are peculiar to a

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12 Kawa Mirza Salih, 'Difficulties and Challenges of Translating Legal Texts from English into Arabic' [2018]<[https://www.researchgate.net/publication/303765841\\_Difficulties\\_Encountered\\_in\\_Translating\\_Some\\_Legal\\_Texts\\_from\\_Arabic\\_Into\\_English](https://www.researchgate.net/publication/303765841_Difficulties_Encountered_in_Translating_Some_Legal_Texts_from_Arabic_Into_English)>accessed 10October 2020.

community that uses a particular language as its means of expression".<sup>13</sup> The legal system of a country is also rooted in the culture of the respective community. As a result, the scope of legal practices adopted in different countries or communities vary accordingly. The history, evolution, factors affecting the diversity - all combined -influence the overall legal system practiced in a country. British legal system is built on common law the French have developed their legal system on statute law. On the other hand, the legal practice adopted in Sri Lanka is an amalgamation of Roman-Dutch law, English law, and customary law. The laws built upon different faiths and doctrines and different traditions and norms contain practices inherent to their own community whilst they showcase attributes that are untranslatable. In such cases the target language lacks a term to interpret the meaning of the legal concept within the source language. When such problems are encountered, the translator has to be circumspect about four aspects. (1) the cultural equivalent should provide a concise and clear justification to the source language legal term born from their inherent cultural heritage (2) the equivalent should make sense – telling, in the target culture and context (3) it should be in parallel with the legal practice of the target legal system. Most importantly (4) the cultural equivalent should not be influenced by individual judgments, opinions or perceptions. For example, the translator's perspective on the marriage customs of the source culture in consideration could not be an influential factor in

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13 Peter Newmark, *A Textbook Of Translation* (Prentice-Hall International 1988).

deciding the cultural equivalent in the target language. Likewise, the cultural attributes of the respective legal systems pose a challenge to the translator.

## **Conclusion**

Translation of legal documents is not a facile task. The translator has to adhere to a set of strict guidelines in the process. At the same time, the translator should be well-versed and well equipped with the knowledge of the legal practices of the source and target texts in consideration. Additionally, the translator must be familiar with the legal practices and languages pertinent to the legal system. The culture entwined with the legal system has a profound impact on the translation. Therefore, the translator should be aware of the respective legal system, the legal language, and the culture native to them.

Furthermore, the translator with all the in- depth knowledge, should be objective. He/ she should manipulate the legal language as it suits and creates a remarkable output. It all depends on the translator's intent — his decisions and designs on the final production. At the same time, he/she should be objective - translation of legal documents should be conducted passively without allowing individual perspectives to shroud the writings. Most significantly, the translator should be accurate, precise, and concise while being impartial.