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Chapter 4

Legal Terminological Issues in Translation

A story was told from the 1940s in China about an American official delegation visiting China. A Chinese host in conversation asked about the American 'Emperor' to the amazement of the visitors. It turned out that the Chinese host was under the impression that the US was an empire and it had an emperor as the head of state because the word 'President' in English had been mistakenly translated into Chinese as 'Emperor'. The story illustrates the kind of misunderstanding that translation, particularly, the translation of institutional terms, can cause.

In this chapter, major terminological issues in law and its translation are examined. The focus is on the lexical characteristics of legal language in general with a comparative analysis of the Common Law and Civil Law.

Major Terminological Issues

Words are the building blocks of language. It is commonly acknowledged that one distinctive feature of legal language is the complex and unique legal vocabulary. Legal terminology is the most visible and striking linguistic feature of legal language as a technical language, and it is also one of the major sources of difficulty in translating legal documents.

This common feature of the language of law is found in most languages, but there are unique features in each language. The legal vocabulary in a language, including both legal concepts and legal usage, is extensive. It results from and reflects the law of the particular legal system that utilises that language. Words matter. In law, words often become points of legal contention. In translation, due to the systemic differences in law, many legal words in one language do not find ready equivalents in another, causing both linguistic and legal complications. There are many lexical or terminological features and problems in legal translation, but here we only consider four major terminological areas that may pose problems in legal translation applicable to most languages. These are (1) legal conceptual issues and the question of equivalence and nonequivalence of legal concepts in translation; (2) legal terms that are bound to law and legal institutions; (3) legal language as a technical language in terms of ordinary vs. legal meanings, and legal synonyms; and (4) terminological difficulties arising from linguistic uncertainty such as vagueness and ambiguity.

Translating Legal Concepts

Legal concepts are abstraction of the generic legal thoughts and rules within a legal system. Concepts are important in law. Law is systematic and structured. Law is often described in categories, for instance, criminal law, property law, contract law, and torts. Legal concepts are the 'authoritative categories to which types or classes of transactions, cases, or situations are refereed, in consequences of which a series of principles, rules and standards become applicable' (Weisflog 1987: 207). Legal concepts play an important role in delineating each branch of the law. For our purpose, as legal translation involves specialised or technical language, the technical nature of legal language stems largely from the extensive use of concepts (Weisflog 1987: 207).

Consequently, a frequently encountered challenge in legal translation is the translation of legal concepts. They are often legal system-bound. Take for instance, as cited in Weisflog (1987), the concept of 'theft' in English law and its equivalent *Diebstahl* in German law. There are considerable differences in the respective laws as to what constitutes 'theft'. As Weisflog explains, in English law, 'theft' is the 'dishonest appropriation of property belonging to someone else with the intention of

keeping it permanently' under the English Theft Act 1968. Under the German law, a person is guilty of *Diebstahl* (theft) if he or she takes away movable property belonging to another with the intention of appropriating it unlawfully. Furthermore, how the two legal systems define 'property' and other concepts contained in the definitions also differs (see Weisflog 1987: 210–211).

The problem of translating legal concepts is not new. Efforts have been made to find possible solutions. For instance, as Lane (1982: 224) reports, many years ago, *Internationales Institute für Rechts- und Verwaltungssprache* (the International Institute of Legal and Administrative Terminology) attempted to tackle the problem arising from the translation of legal concepts that are unknown in the target language or that do not exist in exactly the same form as in that language. The Institute developed a method for coping with this difficulty. According to the Institute (as reported by Lane 1982, see also Sarcevic 1989), a terminological comparison between one language and the other is based on concepts and terms. In this description, a concept is a unit of thought that combines within itself the properties and relationships of things (i.e. material and immaterial objects, situations and circumstances, events actions, procedures, etc.). The properties and the relationships are called the characteristics of the concept.In the sphere of language, a concept is identified by a term that may consist of a single word or of a group of words or even of a group of words or even of letters or graphical symbols. When it is necessary to translate a term from one language into a term in another language, we may study the relevant concepts associated with the terms in question and examine whether they actually correspond (Lane 1982: 224). The Institute compiled and published volumes of the *Europaglossar der Rechts- und Verwaltungssprache* (*European Glossary of Legal and Administrative Terminology*) with detailed description and comparison of various legal and administrative terminology in different European languages (Lane 1982: 224).

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For the first situation of linguistic and conceptual absence, as a result of the separate legal traditions and developmental processes, there are Common Law concepts in English unknown to the Civil Law system and vice versa. Such unique legal concepts are deployed exclusively in different legal systems. For these situations, the translators sometimes need to use borrowing or create new words. For instance, towards the end of the 19th century and beginning of the 20th century, many Chinese legal terms were borrowed from the Japanese, which had earlier been translated from Continental Europe. Legal terms that were introduced to China from the West during this period include such major concepts as *renquan* (human rights), *zhuquan* (sovereignty), *minfa* (civil law) and *xianfa* (constitution), among many others.

Similarly, many terms in modern secular legal Hebrew have been coined directly from foreign law by way of lexical or semantic loan, for instance, the English legal terms, 'precedent', 'good faith', 'restraint of trade', 'public policy, 'rule of law' and 'judicial review', the French concept 'abuse of right', and the German concept *Rechtsstaat* (see Fassberg 2003: 164).

In the English legal language, there are in fact a large number of words that were originally borrowed from Latin and French. According to Tiesma (1999: 31), by far the most lasting impact of French on English is the tremendous amount of technical vocabulary that derives from French. During Norman Conquest and for a substantial period after that, Latin and French were the written legal languages of the law in England, and they remained important legal languages in England in written form as late as the 18th century (Tiesma 1999: 25, see also Mellinkoff 1963). Today, there are still many Latin words and Anglicised Latin words in English law, particularly in legal proceeding-related documents and in legal canons or maxims (sayings about law). Similarly, many French words translated, borrowed or

Anglicised, and in some cases, even syntactical structures and usage, are found in legal English (Tiesma 1999).

Examples of common legal terms, both legal concepts and usage, used in English today that were borrowed from French include (as identified in Tiesma 1999:31) *agreement*, *arrest*, *arson*, *assault*, *crime*, *damage*, *felony*, *heir*, *larceny*, *marriage*, *misdemeanour*, *money*, *profit*, *slander* and *tort*, among many others. Words that had a French origin related to the courts include *action*, *appeal*, *attorney*, *bailiff*, *bar*, *claim*, *complaint*, *counsel*, *court*, *defendant*, *demurrer*, *evidence*, *indictment*, *judge*, *judgment*, *jury*, *justice*, *parole*, *plaintiff*, *plea*, *plead*, *process*, *sentence*, *sue*, *suit*, *summon*, *verdict* and *voir dire*. The English law of real property terminology is also overwhelmingly French: *cestui que use*, *chattel*, *conveyance*, *easement*, *estate*, *fee simple*, *feel tail*, *lease*, *licence*, *profit a prendre*, *property*, *remainder*, *rent*, *seisin*, *tenant*, t*enure*, *trespass*, among others (see Tiesma 1999: 31).

Borrowing and neologism are much more common in legal systems that are in the process of establishment or developing than in more mature or established systems.

For the second scenario in translating legal concepts, that is, similar words exist in the SL and TL, normally, such existing terms in the TL are used in translation, even if they are not completely identical. These may be near or close equivalents, partial equivalents or non-equivalents (Sarcevic 1997). Nevertheless, they need to be used as equivalents. In such cases, they may be semantic equivalents, but are partial equivalents in the conceptual or referential dimensions.

For example, the French *droit* is not identical conceptually to the English word ‘law’. In terms of *droit* as a concept and how it is understood and practised in France, generally speaking, the French conception of law is broader than that of the English Common Law, encompassing political science and morality. Law is not seen as being isolated from other intellectual disciplines but encompasses the study of political, social and economic sciences and public administration, and focuses on the rights and duties recognised in society according to an ideal of justice (Dadomo and Farran 1996). Thus, in France, the essence of law lies in the general ideas it inspires, not in the technical rules by which it achieves these ends (Dadomo and Farran 1996). In contrast, the English Common Law primarily sees law as a body of rules of procedure and remedies that form the machinery of justice as administered by the courts, rather than statements of general principles and rules of ideal conduct. So, one may say that conceptually and referentially, the French word ‘*droit*’ and the English word ‘law’ are not the exact equivalents. However, we have to use these two terms as linguistic equivalents in translation in many cases (see Weston 1991: 46 for examples he cited). Similarly, the French *droit constitutionnel* and *droit administratif* do not correspond exactly in content to the English ‘constitutional law’ and ‘administrative law’ (see Weston 1991: 55–57).

Nevertheless, they need to be translated as equivalents, as there are no functionally equivalent alternatives, and any other translation is ‘simply unthinkable’ (Weston 1991: 57).

There are many examples of words that are linguistic equivalents but conceptually and/or referentially non-equivalents or partial equivalents in different languages. For instance, the English ‘good faith’ and its counterpart *bona fides* in French and German are not entirely the same. ‘*Bona fides’* in the Civil Law and ‘good faith’ in the Common Law both contain the notion of fair dealing, but they differ on a number of points (de Cruz 1999: 260):

> (a) the English notion excludes negligence, but the continental viewoften regards gross negligence as the equivalent of bad faith;

(b) the continental concept covers a wider field than the Englishversion and includes confidential relationships and minimal standards of conduct expected of parties engaging in commercial transactions.

An example cited by Renis (2001) is the term 'the Court of Appeal' in English and its equivalent in Italian, *Corte d'appello*. However, the English term is only a partial equivalent of the Italian since the two judicial authorities have different functions in the respective legal systems as Renis (2001) points out. The literal translation can be potentially misleading.

Proprietà is another example in Italian, which is often translated as 'property'. They may look similar, but as Renis (2001) points out, the English term 'property' is deeply rooted in the Common Law and has a wider semantic scope than the Italian term, which often corresponds to 'ownership' rather than 'property'.

Other examples of semantic equivalents but functionally partial or nonequivalents and terminological incongruity include the French concept *faute*, which corresponds not to one but two German concepts – *Verschulden* and *Rechtswidrigkeit* (Sarcevic 1989: 278); *dettes* in French is much broader than the English 'debts'; the German *Vertrag* is considerably broader than its French equivalent *contrat*, which is restricted to transactions involving mutuality of agreement and obligation (Sarcevic 1989: 278); the German *höhere Gewalt* is more restricted than the English *force majeure*; and 'bankruptcy' in the law of England is not the same as the German equivalent *Konkurs* whose similarity is limited to the intension of meaning (Sarcevic 1989: 282).

A related issue here is that when translating between European languages of Latin root, as in the case of English, French and Italian among others, often words in these languages look similar linguistically but turn out to be different in legal substance. *Faux amis* are quite prevalent. Examples of common false friends include 'demand' in English and *demands* in French; 'domicile' in English, *domicile* in French and *Domizil* in German (see Weisflog 1987 for explanation). Similarly, *la doctrine* in French means 'legal writing' or 'legal scholarship', rather than 'doctrine'. *Notaire* in French is not exactly 'notary' in English. Equally, *magistrat* in French is not 'magistrate' in English. 'Common Law' in English is not *droit commun* in French (see Weston 1991 for explanation), and *Haute Cour de justice* is not the same as the 'High Court of Justice'. *Faux amis* are a common problem when translating between European languages as in the EU institutions (see Wagner *et al.* 2002), for instance, *acquis communautaire* means the body of EU laws, not 'acquis'; *opportunité* is 'advisability', not 'opportunity'; *pays tiers* is 'non-member countries', not 'third countries'; and *Statute des fonctionnaires* refers to 'staff regulations', not 'statute'.

Another example of false friends that is worth singling out is the English word 'jurisprudence'. It has different meanings as compared with its counterpart in French and Italian. In English, jurisprudence [Latin *jurisprudentia* knowledge of or skill in law, and from Latin *juris*, genitive of *jus* right, law and *prudentia* wisdom] has two basic meanings: firstly, it means philosophy of law or legal theory; secondly, it means 'case law'. But in both French (*la jurisprudence*) and Italian (*la giurisprudenza*), the equivalent words only refer to case law or legal precedents. However, in English, 'jurisprudence' in its 'legal philosophy' sense is more commonly used. In translation, it is necessary to ensure the right meaning is used. In international law written in English, the Continental meaning of 'jurisprudence', that is, court decision, is often adopted.

As we have seen previously, 'law' in one legal system may not be the exact 'law' in another. It seems that the approach that legal translation should be predominantly SL orientated needs reconsideration. In order to ensure that one 'law' is to approximate another 'law' in translation or to be as close as much as possible and avoid confusion, we must take into account the various TL factors. The legal usage,

contextual variables, and the purposes and communicative functions of the translated texts in the TL also need to be considered.

It is also important to remember that legal concepts from different countries are seldom, if ever, identical (see Chapter 2 also). It is futile to search for absolute equivalence when translating legal concepts.

In terms of translation methods and strategies, given the vast differences and diverse situations between different language pairs and different legal systems, many different methods may be utilised. For instance, translation methods can vary from literal translation (or formal equivalence, or word for word translation), functional equivalence, to borrowing and descriptive equivalence.

We have cited examples of borrowing earlier of English from French and Latin. Another example of borrowing or loan words is Latin in the Italian legal language. Previously, we have mentioned that the English legal language has many Latin words. In fact, the Italian legal language has a large number of Latin loan words, more than there are in English (Renis 2001). Many Latin terms or phrases that remain untranslated in Italian legal texts must be rendered into English in translation. Latin terms abound in court judgments, arbitration awards, briefs and writs of summons (Renis 2001), for example, *inter vivos* (among the living), *mortis causa* (due to death), *infra* (below/hereinafter), *ex* (pursuant to), *legale rappresentante pro tempore* (acting legal representative), *vulnus* (damage), *dies a quo* (starting date), *inter partes* (between the parties), *contrariis reiectis* (after rejecting any opposite claim, action and objection), *salvis juribus* (without prejudice to any further right), *notitia criminis* (notice of crime), *inaudita altera parte* (without hearing the opposite party) (cited in Renis 2001). When such documents are reproduced in English, the Latin words must be translated (Renis 2001).

As for literal translation or formal equivalence, it is usually discouraged in other types of translation. However, sometimes, literal translation is unavoidable in legal translation. Examples from translation of law from Italian into English using literal translation method include ‘mobility procedure’ for the Italian *procedura di mobilità*, ‘Cadaster’ for *Catasto*, ‘desmain’ for *demanio* (Renis 2001). These are literal translations of concepts pertaining to the Italian labour and administrative law. They do not have equivalents in English. Nevertheless, the legal translator needs to be cautious in translating literally.

Legal System-Bound Words

One feature of legal language and legal translation is the use of legal terms unique to law, the so-called system-bound words. There are many such words but we will only look at three categories of such words: (1) words associated with legal personnel; (2) words associated with court structures; and (3) words associated with particular areas of law and institutions.

Words associated with the legal profession

There are stocks of words that are unique to law associated with the legal profession. A lawyer is a person licensed by the state to advise clients in legal matters and represent them in the court of law. Lawyers have many names in different countries. For instance, in English, there are ‘lawyer’, ‘counsel’, ‘advocate’, ‘attorney’, ‘solicitor’, ‘barrister’ and ‘counsellor’. In the United States, lawyers are ordinarily referred to as ‘lawyer’ and ‘attorney’, or formally, ‘Attorney at Law’. In contrast, in the United Kingdom, Canada, Australia and several other Common Law countries, there are generally two kinds of lawyers – solicitors and barristers. The different titles of solicitor and barrister are a reflection of division of labour in the legal profession in these countries, and the influence of the early developments of the legal profession in England over those territories. In simple terms, solicitors advise clients, and barristers argue cases in court.

A solicitor is a general legal practitioner who assists clients with legal advice, drafts and prepares various legal documents such as wills, documents for business transactions and for buying and selling

houses (called conveyancing), negotiates terms of commercial contracts. When specialist legal advice is required, or when a matter goes to court, a solicitor briefs or instructs a barrister on behalf of their clients. A barrister is a legal specialist advocate who represents clients in court. Barristers often specialise in particular areas of law, such as equity, common law, criminal or family law. Sometimes barristers are referred to as counsels. They also write statements of claims, defences and cross-claims, and write advice or legal opinions on particular matters. Traditionally, both a solicitor (for advice) and a barrister (for representation) were required for legal representation before the courts.

Some Common Law jurisdictions, for example, Malaysia, Singapore, Canada (excluding the province of Quebec), and some states in Australia, have a fused legal profession, whereby a lawyer is licensed both as a barrister and solicitor and can practise as both. In Canada, in the fused jurisdictions, both names are often used. However, Quebec, which has a strong Civil Law influence, is closer to the practice of England, with *les avocats* similar to barristers practising before the courts, and *les notaires* similar to the functions of solicitors.

In England, other Commonwealth countries and former colonies, barristers are divided into senior counsel and junior counsel. Senior counsels are sometimes given the title Queen's Counsel (QC). QC is a barrister appointed to the British crown and when the sovereign is a woman. All lawyers are officers of the court, and they also belong to legal professional bodies, that is, barristers are members of Bar Associations and solicitors members of Law Societies respectively.

The United States does not draw a distinction between barristers and solicitors; all lawyers who pass the bar examination may argue in the courts of the state in which they are admitted, although some state appellate courts require attorneys to obtain a separate certificate of admission to plead and practise in the appellate court.

In Continental European countries, there are different kinds of lawyers performing different functions (see Merryman *et al.* 1994). In general, in Continental Europe, a person who possesses a degree in law is called 'lawyer'. Such lawyers can practise law as employees hired by law firms or other legal entities. However, a lawyer in the Continent may not be the same as an 'attorney' in the US or 'solicitor' in the UK. In Germany, there is one legal profession of *Rechtsanwalt* (lawyer). In France, there are *avocat*, *notaire* and *conseil juridique*. Spain has a division that generally corresponds to the division in Britain between barristers and solicitors. *Procuradores* represent the interests of a litigant in court, while *abogados* is the general term for other lawyers.

Thus, when translating such terms between English and other languages, it is necessary to first identify which jurisdictions the relevant words are referring to, and then determine the appropriate words. Sometimes explanatory words are used apart from indicating that these words refer to lawyers or not.

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As for other names and titles, for judicial officers, in England and Australia, there are the 'Judge', 'Justice' (abbreviated into J after the judge's name in judgments or CJ for 'Chief Justice'), and 'Magistrate' (for magistrates court), among others. There are different words of honorific to address the 'bench'. In most English speaking countries, a judge is addressed as 'Your Honour', and a magistrate in some jurisdictions is addressed as 'Your Worship'. Judges of courts of limited jurisdiction are sometimes known as 'referees'. Judges sitting in the English courts of equity are called 'Chancellors.'

In France, a judge can be a *juge*, a *conseiller* or a *magistrat*, depending upon the courts. In Germany, there is the distinction between professional judges who are trained as lawyers and honorary judges who are lay judges with their main function to assist professional judges. The position of judges in German society is quite different to their position in Common Law countries.

In translating judgments, the correct use of judicial titles is relevant. For instance, in translating judgments between French and English in Canada, *juge* is 'judge', and *juge en chef* is 'chief judge', but if he or she is from the Superior Court, 'chief justice' should be used, not 'judge in chief' (see Meredith 1979).

Finally, it is worth mentioning that there are also differences in the position and standing of legal scholars or academic lawyers in Common Law and Civil Law countries. In the Civil Law system, leading law professors and scholars enjoy a much more prestigious position in the hierarchy of the legal profession than their counterparts in Common Law countries or even lower court judges (Weston 1991: 117). For instance, in France, legal scholars are partly responsible for drawing up reasoned proposals for court decisions, and their writings have great influences over the development of case law; and legal scholars expound the law and do the basic thinking for the whole for the legal fraternity (Weston 1991: 116–117).

The writings of such scholars, textbooks, annotated law reports and articles in learned journals, have been referred to as *la doctrine* (legal scholarship), as a body of opinions on legal matters (Weston 1991: 117–118). Thus, legal academic writing is much more significant as a source of law in the Civil Law system than in the Common Law, as is the standing of legal scholars.

Due to this reason, 'lawyer' in English primarily refers to a legal practitioner. In contrast, the French word *juriste* refers to a person academically qualified in the law who is as likely to be a legal scholar as to be a practitioner (Weston 1991: 117). Thus, *juriste* corresponds more closely to the English word 'jurist' (Weston 1991: 117). However, in English, 'jurist' which refers to a person who has thorough knowledge of law, is not often used, and when it is used, it often refers to judges. According to Weston (1991: 117), the French term *homme de loi*, which implies a practitioner, is a closer referential equivalent to the English word 'lawyer', but it is much less commonly used than either *juriste* in French or 'lawyer' in English.

Words associated with courts

Court hierarchies are often structured differently in different countries. In England, for instance, the court hierarchy consists of the House of Lords as the ultimate appellate court, the Supreme Court of Judicature, Court of Appeal, the High Court of Justice, the Crown Court, the County Courts and the Magistrates Court. There are also other courts such as Coroner's Court and Small Claims Court, and specialised courts such as Admiralty Court and Children's Court.

In Australia which is part of the Commonwealth and of the Common Law family, the court hierarchy is such: the High Court of Australia is the highest court of the land, the ultimate appellate court but also with original jurisdiction. Below at the federal level, there is the Federal Court and Family Court. At the state level, there are the state courts (the Supreme Court and Court of Appeal). Below are the District Courts and Magistrates Courts. There are also various tribunals.

So, in English Common Law jurisdictions, there are two words for 'court': the general term 'court' and a narrower term 'tribunal', which refers to panels and bodies that exercise administrative or quasi-judicial functions with limited or special jurisdiction.

In France, the courts are organised on the basis of general and limited jurisdiction. There are three basic words for 'court': *cour*, *tribunal* and *juridiction*. *Cours* deliver *arrêts*, while the lower courts are

mostly called *tribunaux* and they deliver *jugements* (Weston 1991: 66). *Juridiction* is superordinate to *cour* and *tribunal*. Any *cour* or *tribunal* may be described as a *juridiction* whereas some *juridictions* are *cours* and others *tribunaux* (see Weston 1991). In translation, *juridiction* needs to be translated as 'court'. If it is in plural, as in *les juridictions françaises*, it needs to be translated as 'courts and tribunals'. However, *juridiction d'instruction* needs to be translated as 'judicial authority'. As Weston (1991: 67) points out, the three French terms are generally translated by a single English word because the distinctions between *cour*, *tribunal* and *juridiction*, in so far as they correspond to distinctions in the English language at all, are not reflected in the English language system. There can be confusions when the French terms are translated literally into English.

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In terms of court jurisdiction, there are original and appellate jurisdictions, and criminal and civil jurisdictions, federal and state jurisdictions, among others. Different courts in different countries have different rules. Some scholars have proposed that when we translate the names of the courts, we need to take into account of the differences in court jurisdiction. For instance, Geeroms (2002) argues that the terms *cassation (cour de cassation)* in the French system, *revision* in the German system (*Bundesgerichtshof*), and 'appeal' (or appellant court) in the Common Law system should not be translated as equivalent as if they were the same, because the appellant courts in these systems have different powers and jurisdictions.

As reported in Robinson (2005), during the drafting of the EU Constitution, one thorny problem was the names for the various components of the Court of Justice. Some languages have different words for 'court', signifying a hierarchy that may not be reflected in other languages. The solution finally adopted was to call the lower body 'general court' or the equivalent except in languages where single words were enough to convey the hierarchical relationship. The Directorate-General for Translation (DGT) of the European Commission (EC) has published an *English Style Guide* (DGT 2005c) in which the English translations of the judicial bodies of the Member States are suggested for use by translators, together with the English translations of the names of the various European national legal instruments.

Words Associated with Areas of Law and Institutions

In the third area of legal terms, there are different divisions and branches of law that have special sets of vocabulary. Within the Civil Law family, in both public and private law, the same fundamental branches are found in all the countries of this family: constitutional law, administrative law, public international law, criminal law, the law of procedure, civil law, commercial law, labour law etc. This same correspondence of established categories is also found at a lower level in their institutions and concepts.

Thus, some believe that there are no major difficulties in the translation of the key legal vocabulary within the French, German, Spanish, Italian, Dutch, Greek or Portuguese languages across these branches of law (David and Brierley 1985: 84). The conceptual similarity facilitates the understanding of the foreign laws even though the substantive laws in each of these countries may differ (David and Brierley 1985: 84). However, this does not mean that the structural similarity of the laws of the Civil Law family is complete. Different categories or ideas found in one law may not be known to others, but it is relatively easy to understand the differences within the system (for examples of different notions in these jurisdictions, see David and Brierley 1985: 89).

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Legal Synonyms

Another terminological problem is that a legal term may have several synonyms, and some of the synonyms may resemble one another, but differ in law. Such a feature can cause difficulty in translation. For instance, in English, there are many words related to 'law' – law, statute, legislation, act, enactment, regulation, ordinance, rule, decree etc. Similarly, there are several words in French for the word 'law' – *le droit* (a total set of standards that can include the notions of justice), *la justice* (the legal system) and *la loi* (legislation enacted by Parliament). As for *la loi*, there are also a number of synonyms (see Western 1991). *Loi* (law) is passed by Parliament, and promulgated by the President of the Republic; *décrets* (decree) is made by the President of the Republic or the Prime Minister; *arrêté*, means decision, rules, order or bye-law made the executive branch (see Weston 1991: 60, Dadomo and Farran 1996). Furthermore, *loi* has both a broad meaning that encompasses the constitution, international treaties and administrative regulations and a narrower meaning equivalent to the English term 'statute', and within the narrow meaning, *loi* can be further classified and distinguished (see Weston 1991: 60, Dadomo and Farran 1996).

Other examples of synonyms include *cour*, *tribunal* and *juridiction* in French, and 'court' and 'tribunal' in English (see earlier discussion in this chapter). In international law, there are the synonyms of 'treaty', 'convention', 'agreement', 'protocol', 'pact', 'covenant' etc. (see Chapter 7).

In criminal law, there are 'manslaughter', 'murder', 'homicide' and 'killing'. This is common in most areas of law and in most jurisdictions due to the strict definitions in law.

If we take English contract law for examples, there are the synonyms of 'warranty', 'term', 'condition' and 'covenant'. A 'warranty' or a 'term' of a contract embodies a contractual undertaking. In the case of written contracts, 'terms of contract' refer to every clause in the document or, in the case of an oral transaction, every matter that the parties have agreed to govern their bargain. In this sense, the word 'term' is a synonym for 'stipulation', 'clause' or 'provision'. It is not uncommon for the words 'condition' and 'covenant' to be used in this general way although they are more frequently used in the narrower senses. Furthermore, 'condition' may refer either to terms generally or to the important terms of the contract.

'Warranty' is generally used to described any contractually binding undertaking or promise rather than in its more specific sense of unimportant undertaking or promise (see Carter and Harland 1993: 219). It is not to be confused with the 'warranty' found in the sale of goods contracts or 'warranty' used to describe a manufacturer's undertaking to repair defects in the goods within a warranty period.
As Carter and Harland (1993) point out, the word 'condition' is one of most ambiguous and difficult words in contract law. The word may refer to an event the occurrence or non-occurrence of which has been agreed by the parties to have a particular result. The occurrence or non-occurrence of the event must be uncertain. The second meaning describes any term of the contract, and a third meaning an important term (promise), the breach of which gives rise to a right to terminate the performance of the contract (Carter and Harland 1993: 310). Similarly, the word 'warranty' as can be seen from Lord Denning's judgment, is also ambiguous. According to Carter and Harland (1993), a 'warranty' is a term (promise), the breach of which does not give rise to a right to terminate. Damages are the remedy for such a breach. However, the word is also employed to describe any binding promise, as in the distinction between terms (warranties) and representations. A third meaning still applicable to insurance contracts, is to describe a term, the breach of which gives the insurer the right to avoid the contract (Carter and Harland 1993: 310).

There are many legal synonyms in different areas of law. The terms 'custody' and 'guardianship' in the Australian family law are another example. For instance, a divorce settlement may stipulate:

(1) That the husband and wife have the joint guardianship of the children of the marriage.

(2) That the wife has the sole custody of the said children.

Under the Australian family law, a 'custodian' is the person who has the responsibility for the day to day care of a child while a 'guardian' is responsible for long-term decisions and matters affecting the welfare of a child. The parents of a child can be custodians and guardians of the child. Therefore, 'custody' in relation to divorce refers to the right to have and the responsibility to make decisions concerning the daily care and control of a child (*CCH Macquarie Dictionary of Law* 1993: 47) while 'guardianship' refers to a person responsible for the long-term welfare as opposed to the daily care and control of a child (*CCH Macquarie Dictionary of Law* 1993: 79).

In English property law, there are also legal terms that look similar but are different in substance. The terms 'joint tenant' or 'joint tenancy and 'tenant in common' or 'tenancy in common' are often used in the English legal documents concerning land transaction or property in Common Law countries such as Australia. They can be confusing for the English native lay speakers as well. Under the English property law, when more than one person is to take an interest, there is the distinction between 'joint tenant' and 'tenant in common'. In one sense, 'joint tenancy' is a type of concurrent ownership of property, under which each tenant, rather than having a distinct share in the property, is to be treated as far as outsiders are concerned as the single owner of the entire property (*CCH Macquarie Dictionary of Law* 1993: 93). In other words, under a joint tenancy, all own the property together, and by the principle of survivorship, each person's interest in extinguished on death, leaving the last survivor as the sole own of the property. In contrast, 'tenancy in common' means that all the owners have distinct but undivided shares in the same property (*CCH Macquarie Dictionary of Law* 1993: 169). In strictly legal terms, a tenant is a holder of land, whether freehold or leasehold (*Osborn's Concise Law Dictionary* 1993: 320). In other words, under tenancy in common, each holder owns a separate though undivided share in the property, and there is no principle of survivorship.

In a separate area of law, tenancy and tenant are commonly used and understood to refer to a person holding under a lease. This is not to be confused with the land law meaning of 'tenant'.

Other examples of legal synonyms include 'encumbrance' in English property law, which means any 'mortgage', 'charge', 'pledge', 'lien', 'assignment', 'hypothecation', 'security interest', 'title retention', 'preferential right' or 'trust arrangement' and any other 'security agreement or arrangement'. Most of these words are synonyms, but they are not identical, each has its own connotations. When translated into other languages, the distinctions may be lost. Similarly, phrases such as 'transferring property', 'assigning property', 'disposing property', 'dealing with property' and 'selling property' all have the basic similar meaning of 'selling' but each word also carries its own meaning due to the development and evolution of English property law and legal culture and practice.

In terms of translation, one needs to remember that the translator's job is to translate, not to advise clients on the legal implications of words found in legal documents. However, the translator must be aware of such different concepts so as not to mistranslate and confuse the terms. Many languages and legal systems do not make the same distinctions as English does, and there may not be separate words for these different English terms.

Sometimes, it may be difficult to find sufficient synonyms in the TL. This may present a challenge for the translator who needs to be resourceful and sometimes even creative so that appropriate choices are made to distinguish the synonyms in translation.