

# Translating Modality of English Legal Texts into Arabic

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## 1. Abstract

Legal language is a unique type of language which, for ages, has been the subject of great interest. Being used to interculturally communicate between two legal systems, its peculiar form dictates considerable attention on the part of the legal translator and depth of knowledge of its register thereof. As a facet of such a language, modality more often than not, poses a great challenge to the legal translator due to the fact that each language involved manifests varieties of ways in realizing such a system, therefore, raising problems for the respective translator.

The present paper sets itself to explore a number of difficulties or problems the translators of legal texts may encounter while working out this type of texts; however, it does not claim to be all inclusive since such a task would be beyond the scope of the present study. Translation data for analysis is taken from various published English sources.

## 2. Some Salient Features of English Legal Language:

English legal language is different from ordinary language and there is rich use of unusual sentences in it. It is, moreover, known for its incomprehensibility and obscurity; and this explains why it is, sometimes, referred to as a 'legalese' which expresses the irony of the fact that it may be regarded as a foreign language and incomprehensible to speakers outside the law profession.

Furthermore, law language is characterized by its specific grammar, archaic lexicon, and general fuzziness. In what follows, the main characteristics of this language will be spotlighted, starting with the lexical features.

### 2.1. Lexical Features

Similar to any other scientific field, legal language is characterized by being specialized and of specialized terminology. Inclined to be as much objective as possible, draftsmen of legal texts often set their statements to be to the point, leaving their readers with no room for imagination, speculation and devoid of misleading associations. It seems that the objectivity of law, the type of subject-matter, and the tendency towards directness, conciseness and

precision are the main reasons that account for the higher frequency of some lexical features operative in legal jargon. Legal jargon, generally speaking, refers to the specialized and technical vocabulary of those engaged in a particular trade or profession or of any other specialized group. The most prominent lexical devices used in this jargon will be tackled in the following sections.

### **2.1.1. Terms of Latin and French Origin:**

One of the many noticeable features of English legal lexicon is the existence of Latinism (Latin terms) in its terminology. Alcaraz and Brian (2002:5) link the presence of such terms to certain reasons. They (ibid) hold that it was inevitable for English law to escape the influence of Latin which was supported by two powers at that time: first, the power of the Roman Church over Europe and its widespread use throughout this place of earth as a language of learning and literature, and, second, 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. Here are some Latin phrases and words in common use nowadays (see Garner, 2001):

*Bona fide* (good faith or in good faith)

*Actus reus* (guilty act)

*Alibi* (elsewhere; the fact or state of having been elsewhere when an offence was committed)

Like Latinisms, the existence of legal French items within English legal language is also apparent. 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 (see Crystal and 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.*

### **2.1.2. Archaisms:**

According to Webster dictionary (1989), an archaism is an ancient word or idiom; an antiquity of style or use; and the survival of something from the past. English legal lexicon is considerably loaded with archaic legal terms. However, this touch of archaism is not in vain; it is done on purpose. There are some reasons behind this tendency towards archaic words. Tiersma (1999:95) maintains that "legal language often strives toward great formality; it naturally gravitates towards archaic language". Some lawyers prefer to use antique terms instead of new ones. They use, for example, 'imbibe' as an alternative for 'drink', 'inquire' rather than 'ask', 'peruse' instead of 'read' and so on. Another convenient example is 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'.

Among archaisms are the ones realized in 'portmanteau' words of compounds which consist of an adverbial place to which a preposition-like word has been suffixed. Such a usage is essentially advocated to give the precise reference, especially to the document or its parts, and to the contracting parties, which lawyers find it so necessary to make. Examples are 'hereto', 'hereon', 'hereunder', 'herein', 'hereunto', 'hereinbefore', 'hereinafter', 'thereof', 'thereafter', 'whereof', and so on. (see Crystal and Davy, 1986:208; Emery, 1988:9).

### **2.1.3. Collocation:**

Words which go together in definable combinations can be said to collocate. Actually, there is a common use of collocations in which synonyms or near synonyms are combined in pair 'doublets' (Alcaraz and Brian, 2002:9). For example: *made and enter, by and between, terms and conditions, force and effect, free and clear, covenants and obligations, null and void and so on.*

It should be noted here that draftsmen, nowadays, do not normally use such pairing of words as a distinction from simple style of expressions, but it is merely a tradition adopted when drafting legal documents (Sabra, 1995:36).

### **2.1.4. Technical Terms:**

Every occupational specialization has, as Maley (1987:34) believes, its own technical terms which are characterized as having technical meanings, i.e. "meanings which are unique to a specialized or craft-bound situation and which conceptualize and classify extra-linguistic reality along lines that are either theoretically or pragmatically desirable for the subject matter or situation type" (ibid). Thus, specialists in the legal sphere are actually equipped by a distinct language peculiar to ordinary people and highly characterized by a vocabulary of technical nature. Accordingly, Alcaraz and Brian (2002:17) present a classification of technical vocabulary: purely technical terms and semi-technical terms. The former are those that are only applicable in the legal sphere but nowhere else. For example: *decree, mortgage, sub-letting, deem, premises, lessor, lessee, hereinafter, and so on.* The latter are those words and phrases that belong to everyday lexicon which have gained extra-meanings in the legal context. Therefore, terms of this type are polysemic and the reader would have difficulties recognizing their precise meaning without resorting to the context in which they occur. The following examples are terms of this type: *assignment, maintenance, consideration, title and so on.*

### **2.2. Syntactic Features:**

Syntax is probably of distinctive nature in legal English and certainly accounts for more of the difficulties laypeople face in comprehending it. Some syntactic properties in legal texts will be discussed in the following pages.

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### **2.2.1. Long Sentences:**

Legal English often comprises many long sentences. August (2002:45) points out that long sentences are commonly used in legal, political and theoretical writing. Sentences used in legal documents are long and quite often the entire document is composed in the form of a single sentence. In legal documents, long sentences are more than anywhere else and in fact a deed is usually written in one long sentence. Furthermore, long sentences are capable of expressing complex ideas with precision because they may contain many modifiers. The structures of the long sentences are often intricate, which often include several clauses or modifiers (ibid). Long sentences are often complex sentences, which include relative clauses or adverbial clauses. The following example will illustrate this point:

*The present Agreement is included for a period of two years and will be automatically renewed for successive two years unless denounced by one of the Parties in writing by an advance notice of four months, and shall thereafter be renewable accordingly. Subject to special provisions explicitly provided for in this Agreement, if either party has been prevented from performing its obligations under the Agreement because of an event of force majeure such as earthquake, storm, flood, fire, other acts of nature, epidemic, war, riot, hostility, public disturbance, acts of public agency or labour disputes, or other unforeseeable events beyond the control of the parties, and their occurrence is unpreventable and unavoidable, the party so prevented shall notify the other party in writing within eight days after the occurrence of such event of force majeure, act to mitigate damages, if possible, and within fifteen days thereafter provide detailed information of the event, a certificate of evidence thereof issued by the relevant authorities and a statement explaining the reason for its inability to perform all or part of its obligations under the Agreement.*

### **2.2.2. Use of Adverbials and Adverbial Clauses:**

An adverbial is a clause element. Adverbials fall into three categories: adjuncts, disjuncts and conjuncts. Strictly speaking, it is only the first category, the adjunct, that can be rightly labeled an adverbial, which is generally treated as one of the five elements of a clause (see Williams: 2005 and 2006). Semantically speaking, adjuncts may denote time, place, manner, purpose, cause, result, condition, concession, and accompanying circumstances. A legal document when setting forth rights or obligations, must exactly point out that in what instances, at what point of time, in what place or in what manner an action can be undertaken. This requires adverbials of time, place, condition, concession, manner, etc. Adverbials are used as a means of clarifying meaning and avoiding ambiguity. For example:

*Where* a person is convicted of an offence under Section 11-1-1(1) or (2) or Section 11-1, the Court may order the forfeiture of any money or other property-

a. *Which*, at the time of the offence, he had in his possession or under his control; and

b. *Which*, at that time, he intended should be used, or had reasonable cause to suspect might be used, for the purposes of terrorism.

### **2.2.3. Premodification and Postmodification**

Stageberg (1971:232) defines a modifier as being "a subordinate element in an endocentric structure". On the other hand, modification according to Trask (1993:173) is the relation which a modifier bears to its head. Thus, a modifier is a word or a group of words that serves to add information to that provided by the head of the category within which it is contained. These two concepts are based on the position of modifiers either before or after the head. Postmodification is an important grammatical device for description and sentence expansion. Modifiers in a noun phrase may be classified into pre-modifiers and post-modifiers.

Post-modifiers include all the items that appear after the headword. They are chiefly prepositional phrases, non-finite clauses, etc. In legal documents, nouns are used with long complicated post-modifiers. This is another striking characteristic of written legal English to achieve precision. Post-modifiers are preferred because phrases or clauses can better define the noun they modify than single words that precede a noun (see Trask, 1993:173). The following examples will suffice in this respect:

The *necessary temporary import* license for the tools and equipment necessary for the execution and the license for the re-export. Failure by the Employer to grant the Contractor the *necessary release* formalities for re-export of such facilities and equipment after the *seven month contract* period, then the Contractor will be entitled to *monthly* compensation.

Or, the following example:

However, the party *who suspends* performances should promptly inform the other party. The joint countries shall establish and maintain books and records in accordance with accounting principles and procedures *that are agreeable* to both parties.

### **2.2.4. Prepositional Phrases:**

Another syntactic feature of legislative provisions that occurs one after another is prepositional phrases. Quirk et al. (1985:302) refer to this type of a prepositional phrase as complex prepositional phrases. They (ibid) state that the structure of complex prepositional phrases can be as P-N-P (preposition + noun + preposition). Another common feature is the fact that the prepositional phrases often misplace the normal usage. Some complex prepositional phrases in legislative provisions are:

*for the purpose of, in respect of, in accordance with, in pursuance of, by virtue of, etc.*

Furthermore, complex prepositional phrases are used instead of simple ones for two reasons: firstly, to avoid ambiguity, and secondly, to give clarity to the statement. For example, *by virtue of* is used instead of *by*, *for the purpose of* instead of *for*, and *in accordance with* instead of *under* (see Bhatia, 1993:107).

#### **2.2.5. Passive Construction:**

Passive voice is overused by legal writers because of its useful indirectness and formality (Butt, 2006:153-154). It comes in handy when the author strategically prefers to conceal the agent of the action, or when the text can apply to more than one possible agent ( Tiersma, 1999:74-77). Moreover, the passive voice is always more difficult to follow than the active voice because it reverses the true sentence structure. Thus, it should be avoided unless absolutely necessary; as Garner (2002:40-42) observes: "changing a passive voice to active saves words and makes reading easier". The following example will illustrate this point:

Geneva Convention

Article 27

*Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.*

#### **2.2.6. Nominalization:**

Another common grammatical feature of legal discourse is nominalization, which means using nouns instead of verbs while speaking of actions and processes (Gotti, 2005:77). Although it is especially frequently used in legal texts, nominalization is also typical of other types of specialized or official languages (Butt, 2006:153). Nominalizations reduce the number of strong verbs in the text, i.e., the meaning which could be expressed by only a verb is split between an introducing copular verb and a noun phrase (Gotti, 2005:78). Moreover, Tiersma (1999:77) claims that these structures, like passive voice, are most often used in order to obscure the agent of the action; see the following example:

*In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.* Nevertheless, the above example shows also that the change of distance between certain lexical items makes it possible to slightly manipulate the meaning (see Lakoff, 1981: 128-132). When the strong verb comes right after the agent, the direct connection between them is more visible, whereas expressing the action

by a noun and separating the agent from it by means of a copular verb helps to obscure the link between them (Ibid). There are some legitimate reasons for doing this, for example, when there is a need to state something as broadly as possible, i.e. in cases where the drafter needs to cover the possibility of anyone performing a given action (Tiersma, 1999: 77-78).

Gotti (2005: 78) argues that there are cases in which nominalization makes it possible to achieve greater conciseness and precision, even if using a verb would allow for fewer words. Finally, the use of nominalization may be regarded by some drafters as the hallmark of the desired formality (Butt, 2006: 153) which is supposed to emphasize the specialized character of the text. Nonetheless, the dense text consisting mainly of nominal phrases is not easy to interpret---- it demands more effort and is often impossible without specialized knowledge of the certain type of texts (Jopek-Bosiacka, 2006: 67).

However, plain English proponents agree that communication is always more effective and direct when strong verbs are used rather than nominalizations (Butt, 2006:153, Tiersma, 1999: 206).

#### **2.2.7. Syntactic Disruption (Discontinuity):**

Bahatia (1993:111) holds that the presence of qualifications makes legislative provisions an interesting genre. These qualifications are inserted within the syntax of the legal sentence. Draftsmen try to insert qualifications right next to the word they meant to qualify in order to make the main provisional clause quite clear and more accurate. They attach the embedded clauses, whenever needed, even if these embedded clauses disrupt the linear order of the sentences. The embedded clauses can create ambiguity if they are not placed judiciously. They, sometimes, split the auxiliary verbs and main verbs of the sentences or the rest part of the predicate. Furthermore, they cut off prepositions from the noun or noun phrase that follows it, as in the following example where the noun phrase is split from the verb phrase:

*(Protocol Relating to the Status of Refugees)*

*Article 8*

*The States Parties to the Present Protocol (Noun Phrase),*

*Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951, Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention, Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951, Have agreed (Verb Phrase) as follows.....*

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### **2.2.8. Subjunctive:**

Subjunctive is a special verb mood which, in English, is used mainly in dependent clauses to talk about desirable, possible, or imaginary situation (Swan, 2005: 567). It was used in older English and is still widely used in some other languages, for instance, in French. In modern English, subjunctive is used rarely, hardly ever in spoken dialect, and it is regarded as old fashioned and extremely formal (Swan, 2005: 567; Tiersma, 1999: 93).

Use of subjunctive in legal texts is not particularly onerous; the subjunctive constructions are usually quite comprehensible and, probably, there are more important aspects of legal texts that the plain language movement should focus on. Nonetheless, according to the idea of modern legal drafting presented by some of its proponents, for example Butt, the rules of legal writing should not be different from the rules governing modern English writing in general (Butt, 2006),

Following this reasoning, if drafters wish to keep the language of their documents up-to-date, they should abandon such obsolete grammatical constructions as the subjunctive.

In modern British English, it is very unusual and the ideas that in the past were expressed by means of subjunctive structures are nowadays conveyed using modal verbs such as *should*, and ordinary tenses (Swan, 2005: 568).

Although subjunctive is an exceptionally elegant device that evokes the style of great works of British literature, in legal texts, it should be rather sacrificed for the sake of clarity. For example:

*Republic of Ghana Treaty Manual*

*The Cabinet Memorandum should also indicate the benefits to the Republic of Ghana if the treaty, agreement or convention is signed or ratified.*

*The Cabinet Memorandum should further spell out the obligation of government, that is the financial and legal impact, if the treaty, agreement or convention is ratified and must state that the Attorney-General and Minister for Justice has been consulted;*

### **3. Investigating Modality in English Legal Texts:**

According to Halliday (1985:335), "modality refers to the area of meaning that lies between yes and no. What this implies more specifically will depend on the underlying speech function of the clause": (1) If the clause is of an indicative type, i.e. it embodies information or a proposition, this entails (i) 'either yes or no', i.e. 'may be', or (ii) 'both yes and no', i.e. 'sometimes'; in other words, either probability or usuality; (2) if the clause is a proposal, which has no real congruent form in the grammar but it can be interpreted in a performative sense, it means either (i) 'is wanted to', related to a command, or (ii) 'wants to', related to an offer, in technical terms, either obligation or inclination. Classification as such yields two types of modality: type (1) is referred to as modalization and



type (2) is called modulation. This means that modality can be either (1) modalization ('indicative' type) which is of two types: (i) probability 'may be' and (ii) usuality 'sometimes' or (2) modulation ('imperative' type) which is also of two types: (i) obligation 'is wanted to' and (ii) inclination 'wants to'. Here is an example of each:

1. (i) Mary will probably know. [probability]

1. (ii) It will usually work. [usuality]

2. (i) Fred should tell them. [obligation]

2. (ii) John will take you home. [inclination]

In semantics, modalization is referred to as 'epistemic' modality and modulation as 'denotic' modality (ibid: 336).

Legal texts mainly deal with rights and duties which, according to Maley (1987:29), are created by two ways; to command or to empower. This dichotomy, from speech act theory perspective, sets up to significant legal illocutionary acts (ibid):

1. Mandatory illocutionary acts which have the force of command, imposing an obligation of *act* or *not to act*. The modals (must and shall) are used in the performance of mandatory illocutionary acts.

2. Discretionary illocutionary acts which confer a power that may or may not be exercised. Discretionary types have two subcategories: directory or permissive, a distinction between substantive and procedural. *May* is used for the performance of discretionary acts.

The functions for distributing rights and obligations are pragmatically approached as these are realized through directives, constitutive, and commissive acts in the corpus of legal texts.

In outlining the terms of a contract, for example, one Party of the contract (e.g., principal, seller) imposes a certain behavior on the other party (e.g., agent, buyer) and vice versa by means of statements of obligation and prohibitions. Also through the assignments of rights and benefits and statements of permission (Trosborg, 1994: 312)

### **3.1. Obligations:**

The modal *shall* is used almost exclusively to express obligation in legal texts. *Shall* is used to reflect the illocutionary force of an order. The addresser-one party to the contracts, for example, directs the other party to do x. By signing the contract, the addressee undertakes the obligation. Crystal and Davy (1969:206) focus on the obligatory effect of *shall* as assigned in legal texts, stating that "*shall* is invariably used to express what is to be the obligatory consequence of a legal decision, and not simply as a marker of future tense, which is its main function in other varieties". Maley (1987: 33), on the other hand, maintains that the denotic modal *shall* performs and creates an obligation

in the most formal way. Consequently, it yields an archaic touch with its "overtones of authority and power".

Thorough research on the occurrence of *shall* was made by Williams (2006:238-239) who reveals that, although its use has been significantly reduced in jurisdiction of Australia and New Zealand, *shall* still appears in the laws of the United States, Canada and is extremely popular in the United Kingdom, as well as in the English legislation of the European Union. It is used out of habit by lawyers who are unable to find coherent substitutes for it among less archaic verbs. Moreover, many drafters cling to *shall* because of its exceptional flexibility (Butt, 2006: 132). However, the polysemous character of the word is, at the same time, its most dangerous drawback (ibid), since its most common meanings in legal context are: imposition of duty/obligation, direction/recommendation, entitlement, condition, and future action (ibid:131-132). The borders between these meanings are not always clear-cut, which may pose a great difficulty in the interpretation of the text, and which may create the ground for litigation. In ordinary English, *shall* is used mainly to talk about the future, to ask for instructions or decisions, but sometimes it can also express obligation (Swan, 2005:212-220). Nonetheless, *shall*, outside legal texts, is already very unusual in American English and it is becoming more and more obsolete also in British English (Swan, 2005: 312; Williams, 2005:181). It is possible that shortly it will become one of those archaic words restricted to legal texts. In the following legal text, *shall* is used to express obligation and command:

Any dispute arising from interpretation of this agreement *shall be settled cordially*. If no agreement is reached, an Arbitrating Committee *shall be created*.

### **3.2. Prohibitions:**

*Shall* is used almost exclusively in the regulation of behavior by issuing prohibitions through the use of negation as in the following legal texts:

The Supplier *shall not* be entitled to vary or otherwise modify the Supply without the previous written consent of the Purchaser.

*No* part of the Supply *nor* any share or interest therein *shall be* in any manner transferred, assigned, or sub-let by the Supplier, directly or indirectly to any person, firm or corporation whatsoever, without the prior written consent of the Purchaser.

### **3.3. Rights:**

Statements of permission generally issued from some authority, which is often the speaker (addresser)- the performer of the speech act. In legal texts, a symmetrical relation holds between two or more parties each of which is able to grant permission to the other party or parties (discretionary authority), to assign rights or negate abilities (Trosborg, 1994: 312). Below are some examples:

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The Seller *may* subcontract any or all orders received by him.

Either Party *may*, by notice to the other Party in writing, change its postal address, cable address or telex address for receiving and / or forwarding such notices.

The Purchaser *may* at any time give written notice to the Supplier to terminate the Contract forthwith.

### **3.4. Constitutive Rules:**

Kurzton (1986: 23, in Trosborg, 2004:106) holds that "Sentences used to explain or define expressions and words in the statute or to supply information concerning the application of the statute, or part of it, are constitutive rules.

Two types of rules are recognized by Trosborg (2004:106), definition rules and stipulative rules; definition rules are often indicated by the use of verbs like mean, be, define, constitute, etc. while the stipulative ones are signaled in terms of verbs such as apply, be deemed to, include, be intended to, etc. the following examples would illustrate the use of the above rules:

*Statutory Actions **are** actions relating or conforming to, or created, defined, or required by a statute.*

*The law **is intended to** govern the use of computers in e-commerce.*

The modal *shall* may be seen as part of the constitutive rules encoded in the following example, indicating a constitutive-spelling-out-rule of an agreement or a contract with a legal effect (see Trosborg, 1994: 312):

*The Contract Price **shall be deemed to be** a lump sum price and **shall be firm and not subject to any fluctuation whatsoever.***

### **4. Translating Modality in English Legal Texts into Arabic:**

Legal translators have traditionally been bound by the principle of fidelity to the source text. Consequently, the translator's task is to reconstruct the form and substance of the source text as closely as possible. Literal translation was the golden rule for texts and is still advocated by some lawyers today. Emmanuel (1990: 280-285) maintains that the translations of legislation and normative texts require absolute literalness. At the same time, he (ibid) says that judgments can be translated more freely, thus recognizing that text type also plays a role in determining the strategy of a legal translation. Weisflog (1987: 191), who is a lawyer translator, sees that there is no room for freedom in the translations of texts of national legislation, international treaties and conventions, as well as instruments of primary and secondary community law (treaties, regulations, directives, etc.).

In view of the special nature of legally binding texts, it is agreed on that substance must always prevail over form in legal translation. Translation techniques and methods often vary from jurisdiction to jurisdiction, even for the same type of text. Koutsivitis (1988: 344), a translator at the EU Commission, emphasizes that the translator's task is to transfer the sense of the original. He

contends that EU translators are permitted to be creative with language in so-called non-restrictive parts of primary and secondary EU legislation (ibid).

In what follows, a number of legal texts that include some modal verbs will be cited and the researcher will do his best to translate them into standard Arabic in a way that he can achieve the optimal equivalence in the TL.

#### **4.1. Legal Texts that Express Obligation and Command:**

As it has already been referred to above, the modal *shall* is used in legal texts to express obligation and command. *Shall* poses a level of difficulty in both interpretation of clauses containing it and in the translation of such clauses. Traditionally, the modal *shall*, in legal texts, carries an obligation or a duty as opposed its common function, expressing futurity (Tiersma, 1999:31). More importantly, Sabra (1995:31) claims that any legal verb preceded by 'shall' is normally translated into Arabic in the present form. The following legal texts will clarify the point:

*Any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft.*

تقدم الدعوى باسترداد أي قطعة ثقافية في غضون مدة أقصاها ثلاث سنوات ابتداء من التأريخ الذي يعلم فيه المدعي بمكان وجود القطعة و هوية حائزها، و في جميع الحالات تقدم الدعوى في غضون مدة أقصاها خمسون سنة ابتداء من تأريخ حدوث السرقة.

Here, the modal *shall* is translated into Arabic in the present form which is تقدم, which also expresses obligation and command in Arabic.

*All such payments shall be made to the Lessor at Lessor'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.

In this example, the modal *shall* is also translated into Arabic in the present form to express obligation and command. However, in some other cases, the modal *shall* can be translated into Arabic as يجب, or على to express obligation and command. For example:

*The Lessor shall hand over to the Lessee the property, together with a set of keys, padlocks, furniture, fixtures and any fittings in a satisfactory condition and working order. An inventory list thereof is provided and is an integral part off this agreement.*

على المؤجر تسليم المأجور إلى المستأجر مع المفاتيح و الأقفال و الأثاث و التركيبات و أية تأسيسات أخرى في حالة عمل جيدة و مرضية. و قد أعد كشف محتويات المأجور مما يعد جزءا متما من هذا العقد.

Here, the modal *shall* has been translated into the preposition على which expresses obligation and command in Arabic. Another option could be seen in the following example:

*Husband shall pay to Wife spousal support in the sum of-----.*

يجب على الزوج أن يدفع للزوجة نفقة تقدر بقيمة-----.

In this example, the modal *shall* has been translated into *يجب* in Arabic to express obligation. This means that the modal *shall* that expresses obligation in legal texts can be translated into the present simple verb, *على* or *يجب*.

#### 4.2. Legal Texts that Express Prohibitions:

Legal texts that express prohibitions can be achieved by the use of the modal *shall* with negation. The following examples will suffice in this respect:

*Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.*

لا يحرم الأشخاص المحميون في أي إقليم محتل بأي حال و لا بأية كيفية من الانتفاع بهذه الاتفاقية، سواء أكان ذلك لتغيير ما يطرأ على مؤسسات الإقليم المذكور أو حكومته نتيجة لاحتلال الأراضي، أو بسبب اتفاق ما يعقد بين سلطات الإقليم المحتل و دولة الاحتلال، أو لقيام الأخيرة بضم كل الأراضي المحتلة أو جزء منها.

In the above example, the modal *shall* and *not* have been translated into the negator *لا* that is followed by the present form in Arabic *يحرم* to express prohibition.

Look at the following example as well:

*The Second Party shall not commit any act of negligence, or cause any damage to tools or equipment of work or of workers protection, and shall observe work confidentialities.*

يلتزم الطرف الثاني بأن لا يرتكب أي فعل من أفعال الإهمال، أو يلحق الضرر أو ألتلف بمعدات العمل أو تلك المخصصة لحماية العاملين، وان لا يفضح اسرار العمل.

In this example, *shall not commit* is translated into *لا يرتكب* which expresses prohibition in the Arabic legal text.

Though in different form, the sense of prohibition is also there, see the following example:

*The Engineer shall not be bound to approve any payment on account to the Contractor in respect of materials on Site, unless the quantity, quality and value of such materials must have been ascertained and unless they are in conformity with the Specifications, and provided that such materials are stored and protected on the Site in a proper manner.*

لا يكون المهندس ملزماً بالمصادقة على أية سلفة إلى المقاول عن المواد المطروحة في الموقع ما لم يتم التأكد من كمية هذه المواد و نوعيتها و قيمتها و مطابقتها للمواصفات، ومن انها مخزونة ومحمية في الموقع بصورة جيدة.

Here, the clause *the Engineer shall not be bound* has been translated into لا يكون المهندس ملزماً which also expresses prohibition and it is just another way to say لا يلزم المهندس بالمصادقة... or لا يلزم المهندس غير ملزم بالمصادقة... Moreover, the same meaning of prohibition can be coded as some right assigned for that engineer like: للمهندس (الحق في) عدم المصادقة... .

#### 4.3 Legal Texts that Express Rights:

Legal texts that express rights can be realized by the use of the modal *may* as in the following examples:

1. *The Secretary General may conclude with any Member or Members supplementary agreements adjusting the provisions of this Convention so far as that Member or those Members are concerned.*

يجوز للأمين العام أن يعقد مع أي عضو أو أعضاء في هذه الاتفاقية اتفاقات تكميلية لتعديل أحكامها فيما يخص ذلك العضو أو أولئك الأعضاء.

In this legal text, the modal *may* has been translated into يجوز to achieve rights in the said legal text in Arabic.

2. *The First Party may assign to the Second Party any work that has not been agreed upon in this contract provided that such a work is not significantly different from the agreed upon work and is not unrelated to his specialty.*

يحق للطرف الأول أن يكلف الطرف الثاني بأي عمل غير متفق عليه في هذا العقد شريطة ألا يختلف ذلك العمل عن العمل المتفق عليه اختلافا جوهريا ولا يخرج عن اختصاصه.

Here, the modal *may* has been translated into يحق in Arabic to achieve rights. This means that the First Party has more than one option in this regard.

However, both of the above examples can be translated in different forms of modality, keeping the rights unequivocally expressed; يجوز could be replaced by يحق or للأمين العام الحق, and this holds true for the 'يحق' which can be substituted by يجوز للطرف الأول or يجوز.

The end-argument of section 4.3. marks some overlap between the modality of prohibitions and that of rights where the legal man can say للمهندس لا يلزم المهندس غير ملزم and يجوز لل... or الحق في عدم المصادقة thanks to the fact that they both have overtones of authority and power that dictate some obligation on people in general and those mentioned in the examples in particular (see Maley, 1987: 33).

#### 4.4. Legal Texts that Express Constitutive Rules:

As already mentioned, the modal *shall* is basically used to demonstrate that the legal subject of a given sentence has a duty (not) to do something. However, certain sentences in which the modal *shall* carries a meaning different from that pretended in legal writing can be found. *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 constitutively, or for futurity; consider the following example:

*The Lifelong Learning Programme shall have the following objectives (a), (b), (c)....*

where *shall* can be taken as a *future shall* (though a sense of commitment could be also felt), and therefore, be like سوف يشتمل برنامج التعلم لمدى الحياة على الاهداف ...التالية... , or it is a case of a stipulative rule, and thus, translated into Arabic like:

...التالية... (a simple-present with futurity sense and, possibly, embedded-obligation), or

...التالية... (where obligation is quite clear in terms of على (cf. Gibova, 2012).

Nevertheless, the modal *shall* in the following example could be taken as a statement of right-expression (thanks to the semantics of *have the right*), and as a constitutive-rule case (because of the stipulative sense of the verb *have*); this is also clear when the sentence translated into Arabic:

*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 زوجها و يحق لها أيضا العودة إلى اسمها السابق قبل الزواج....

Having a prescriptive power, the use of *shall* in the above example bears no immediate consequences on behalf of the legal subject the *wife*, however, it could have a performative effect when it is activated by some recipient in the long run ( see Trosborg, 2004:106-7; Gibova, 2012)

## **Conclusions**

In light of the previous analysis and application to translation, the present study has arrived at some conclusions. Legal texts in English and Arabic deploy high formality of language to the extent that some people face problems to understand them. Legal language is characterized by its specific grammar and archaic lexicon in addition to its great wordiness and general fuzziness. Modality in English legal texts expresses several meanings: obligations, prohibitions, rights and constitutive rules which can be effectively translated (i.e. in intercultural effective manner) into Arabic if the legal translator respects the genius of the respective legal language system. What essentially counts is the legal effect cross the two languages. Thus, abidance by the conventional rules and styles of the two legal language systems is considerably important to that effect.

Despite the fact that each language displays different modes of realization of modality, both (English and Arabic) can efficiently provide syntactic, semantic, and contextual means of realization that could bridge the gaps between them, producing functionally (though sometimes not identically parallel) equivalent texts.

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