María Ángeles Orts Llopis

THE UNTRANSLATABILITY OF LAW?
Lexical differences in Spanish and American contract law

As a direct consequence of the idiosyncrasies of its sources and interpretive procedures, every legal system has its own kind of language. In particular, the language of American contract law presents a variety of lexical features that often make them 'untranslatable' into Spanish. With American English serving as the lingua franca of the vast majority of commercial transactions worldwide, translating its legal texts into Spanish is an imperative, especially within the scope of bilateral commercial agreements between Spain and the USA. Through a close analysis of the terminological traits of this field, this article identifies and discusses fuzzy terms (false cognates or 'false friends') along with technical terms, whose similarity in both languages and Latin origin renders their translation problematic. Through the analysis and comparison of the legal meanings and contexts of these terms in both languages, this study aims to make a contribution to their translation.

Keywords legal interpretation; legal construction; contract terminology; contractual discourse; legal translation

English as the lingua franca of International Commercial Law

Drafting and interpreting legal texts at an international level is a delicate and difficult matter. It is particularly challenging in the context of transnational commercial agreements, since the ability to trade successfully depends on the ability to achieve mutual understanding through linguistic consensus. With the world trying to become truly multilingual and to offer coordinated common meanings for legal instruments and treaties, globalisation confronts both linguists and translators with the indisputable fact that English has become the effective lingua franca of international trade and international relations as a whole.

Despite the European Union's policy regarding its 20 official languages, English has become, in effect, the working language for most of the institutional and financial bodies on the continent. This is particularly true of institutions such as the European Central Bank, which favour the use of English (Pérez Vidal, 2002: 2). In the face of this, scholars, lexicographers (Martinez de Sousa, 2002: 5) and other representative members of the Spanish population complain bitterly about their language's increasing

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loss of status, the lack of control and the randomness with which English borrowings are incorporated.

At the international level, 'the Anglo-internationalisation of business' has made a major impact over the last two decades and 'is unlikely to change in the near future' (Vogt, 2004: 14). Since international transactions are for the most part carried out in English, international litigation and legal practice worldwide are conducted in English as well. As a result, legal concepts from languages like Spanish or French need to be translated or explicated so that they can be expressed in the lingua franca. This in itself may signal a major problem: every legal system has evolved its own kind of language as the direct consequence of the particularities of its sources and hermeneutic procedures. At the most basic level, for example, there are significant differences between civil and common law systems. Nonetheless, once terms like 'specific performance' or 'breach of contract' are incorporated into the everyday usage of international contracts, insurance policies, and other relevant documents, the Anglo-American perceptions and legal concepts attached to them can creep surreptitiously into the substantive law of the country of reception and may have deep consequences for the way commercial transactions are conducted. Specifically, the language of American contract law – which, because of the USA's global commercial power, has a deep influence on how international trade agreements are drafted – presents a variety of lexical nuances that very often make equivalence impossible in the task of translation into Spanish. A direct translation or inaccurate interpretation of an American contractual document into Spanish could have dire consequences.

Nevertheless, the aim of this article is not to criticise the advent of English as the global language of law. On the contrary, I feel that, in acting as an international tool of communication, this language does fill a manifest gap, supplying a degree of unity and understanding to the development of commercial communication worldwide. I do not, therefore, consider the widespread use of English as a sign of an imperialist conspiracy, but as a demand-driven fact of the world in which we live. Moreover, I think it is healthy and necessary to make the relevant legal instruments (legislation, contracts, and treaties) of non-Anglophone countries accessible in English, in order to promote their modernisation and standing in the world. Despite this statement – and specifically regarding Spanish legal language – I do believe that greater awareness and sensitivity towards national legal structures are required when translating texts from Spanish into English. The same is true when versions of international contracts, policies or treaties are rendered into Spanish from English. In the course of business transactions at large, terminological differences corresponding to different conceptualisations of the legal world have, at the very least, to be accounted for.

Spanish and American legal discourses

Ostensibly, the general traits of the languages of the law in Spanish and in American English are as dissimilar as might be expected from two systems that have evolved out of different legal traditions: a system of civil law, based mainly upon codification, and a common law system, based mainly upon case law, with a degree of legislation. Accordingly, in the area of contract, private agreements in Spain are controlled by the Civil Code (sections 1254 to 1314) and through titles IV and V of the Commercial

Code. Without being codified as such, the American system could certainly be defined as being 'mixed'; it combines a complete written update of precedents in the *Restatements of Contracts Second* as well as an explicit *Uniform Commercial Code* regulating the sale of goods. This is not to say that the American system is akin to civil systems in general, either in private law or elsewhere, but that traits of the English and the Spanish lexicons are not always as different as one might expect.

However, even if the spirit of fair trade underlies both systems and normally leads to parallel results in legal disputes, variances still exist, springing from different starting points in approaching legal problems. Although subtle, these are sufficient to generate potentially serious misunderstandings. Yet it is worth considering whether what has been labelled by sociologists and sociolinguists (Danet, 1984: 5) as the 'conspiracy theory' in common law systems also applies to the language of the law in Spain. The 'conspiracy theory' argues that legal language is archaic, obsolete and purposefully opaque and pedantic, because its communicative aim is to separate the ruler from the citizen and the legal message from its user, with a view to perpetuating the power and privilege of the legal class. Similarly, one of the most distinguished forensic linguists in Spain, Enrique Alcaraz, has described legal discourse in Spanish as full of beautiful metaphorical passages, but also as opaque, obscure and awkward, full of formulaic sentences and devoid of elegance (Alcaraz, 2002: 15 – 22). Nevertheless, people worldwide want their legal representatives – judges, lawyers – to communicate like ordinary mortals: in language comprehensible to everyone. In Anglo-Saxon, common-law countries, an increasing number of law-users and jurists advocate the use of a plain language in legalese, the jargon used by lawyers (Tiersma, 1999: 200).

Plain language campaigns have a long tradition in Great Britain and the United States. By contrast, the Spanish language is governed by a legislative body, the *Real Academia*,[1] which has achieved a remarkable degree of influence across the Spanish-speaking world by monitoring and regularly updating standardised words and usages. Still, the *Real Academia* does not control the particular discursive style of a genre or set of genres, and therefore has nothing to do with the way lawyers and judges administer their communicative resources. As a result, and despite being based upon codified foundations, the language of the law in Spain is – according to Spanish academic circles – deteriorating stylistically (De Miguel, 2000: 10), without even a 'plain language movement' to protect the citizen. The problem lies less in legislation than in the language of judicial rulings, doctrine, instruments of private law (like contracts and insurance policies) as well as in oral discourse, areas in which linguistic control is more difficult to exert. This situation, as we will see, is made worse by the fact that the scope of freedom in legal interpretation is much greater in Spanish law than in the USA. Distinctions are not made between interpretation and construction; jurists, therefore, have a great deal of freedom to speculate about what the meaning should be in legislation, as well as in private agreements.

Lexis in Spanish legal discourse

Principal differences between the American and Spanish legal structures derive from their civil and common law origins. Yet, especially in the area of contract, and, even

more specifically in the sale of goods – where the American system displays some degree of codification – there is a possibility of approximation between both systems.

Legal Spanish is particularly dense and elaborate in its syntax, which is often also hackneyed and formulaic. At the same time, opacity is in no way absent from its lexis (Alcaraz, 2002: 25). In fact, all the features that scholars like David Mellinkoff (1963: 11 – 29) and Peter Tiersma (1999: 87) have pointed out regarding the idiosyncrasy of the English legal lexicon are also present in the terminology used in Spanish legal discourse. On the other hand, according to Mellinkoff (1963: 11 – 29) and Tiersma (1999: 87), English legal discourse is said to overuse archaisms from Old English, Old French, Anglo-French, as well as Latin. Likewise, the Spanish legal lexicon is plagued with old-fashioned expressions. Examples of these are Latin words and phrases, introduced through Roman law ('pure' Latinisms like *ab intestato*, or *ex aequo et bono*) or through the romance roots of the Spanish language ('mixed' Latinisms like *abogado* or *delito*). Also, Hellenisms, mostly acquired through Latin (like *anticresis* or *hipoteca*), and Arabisms, less present in the legal area than in other linguistic fields, are nonetheless important (for example, *albacea* or *alquiler*). Additionally, legal Spanish also borrows from French – a relic from the influence of the *Code Napoleon* – and, most importantly, English, in the form of xenisms[2] (*broker, dumping*), calques (*suap* for *swap, barnaut* for *burnout*) and false loans[3] like *mobbing, leasing*, or *trust* (Orts, 2005a: 30; 2005b: 52). Specialists note further features in English legal discourse, such as the overuse of *terms of art* or specialist vocabulary and the presence of semi-technical words, labelled as *common words with uncommon meanings* by Mellinkoff (1963: 11), and as *legal homonyms* by Tiersma (1999: 111). Surprisingly, the latter confuses lay users much more frequently than the former. Technical words have one meaning, or, to put it differently, they have a one-to-one form-meaning relationship; once the meaning is mastered, or at least identified, there is no room for confusion. This is not the case with semi-technical words, where there is a bifurcation of meanings: one is supplied by the common language, and the other is invested by the legal usage. These traits are equally true for English and Spanish legal discourse. Alcaraz (2002: 57) talks about the 'univocity' and 'medullar' character of those words that belong exclusively. Furthermore, he discusses '*equivocal*' words, whose connotative meanings are activated within a specific context and could not be rightfully labelled as 'terms of art'. These constitute a wide field of study in the legal discourse of Spanish and a source of difficulty for those who approach such discourse from an untrained stance or the position of a foreigner.

In addition, numerous semi-technical words like *auto, reconvenir* and *prescripción* are commonly used in general Spanish. These can constitute an area of serious misunderstanding even for Spanish lay users, perhaps because their common usage can be easily conflated with the legal one.

Issues in translation

As argued above, there is nothing obviously unusual about the differences and similarities between the legal lexicon in Spanish and English, because, in general terms, the phenomena that take place at the lexical level are of a very similar nature in both languages. In this context, however, a potential problem with semi-technical

terms arises in both legal Spanish and American English, where these are often cognate terms with a common Latin origin but, in some cases, totally different meanings. Alcaraz (2002: 85) calls words that are related because of an identical origin 'paronyms', distinguishing them from false cognates, or false friends, which are terms with the same etymology that have developed differently in both languages. The difficulty with these words does not lie in the identification of equivalent legal/linguistic phenomena, but rather in the misidentification of some words with formal similarity but conceptual differences.

The remaining part of this article will focus on the possibilities of equivalence and other translation issues associated with words which are of crucial importance in contract law, such as *causa contractual*, translated frequently as 'consideration', and *dolo* – translated more or less successfully as 'fraud'. I shall focus additionally on issues surrounding the translation into Spanish of so-called 'flexible' adjectives from American contract law, such as 'implied', 'express', 'actual', and 'constructive'.

Contract: causa contractual *or 'consideration' and* dolo *or 'fraud'*

As Bender (2003: 1) points out, there are three essential elements in the Spanish system of contract:

a) *Consentimiento*, which he translates as consensus or consent, which presumes capacity or *capacidad contractual* on the part of the agent, and should be devoid of mistake, *error*, violence, *violencia*, duress, *intimidación* and fraud, *dolo*.
b) *Objeto*, or object or subject matter of the contract, which must be possible, *posible*, private, *privado*, legitimate, *legítimo* and specific, *específico*.
c) *Causa contractual* or cause, sometimes translated as 'consideration', one of the most disputed concepts in both Spanish and American contract law.

First, then, let us examine the concept of *causa contractual*, which is either the offer or promise of a thing or a service, the payment for a thing or service, or under the Spanish law, a gift. Now, I could easily translate *causa contractual* as 'consideration', as Bender or Sánchez-Terán (1985: 78) do, but there are two major technical problems in doing so. In the first place, in Spanish law *causa contractual* does not imply a quid pro quo of offer and acceptance, as 'consideration' does in American law, unless the contract is explicitly a bilateral one. As mentioned above, in Spanish law a gratuitous contract may also describe a situation in which one of the parties offers something to the other party. A gift like a donation is always considered a contract in this system, since in charitable agreements the mere contribution of the donor constitutes consideration. Therefore, I would advise resorting to the literal translation 'cause' and accompanying it with an explanation, even if this represents something of a paradox and is contrary to the way false cognates are typically dealt with. Otherwise, the attempt to achieve equivalence by using the term of the source language will easily be thwarted.

Secondly, the question of equivalence between *dolo* and its traditional translation, 'fraud' (Romanach, 1994: 274; Bender, 2003: 1) merits further examination. *Dolo*, from the French *dol*,[4] refers to intentionally deceptive words or acts on the part of the contracting parties and is similar to fraudulent misrepresentation in American law. However, Spain has no doctrine of misrepresentation. Yet, as Whincup (1996: 259) points out, similar problems induce similar solutions, and *dolo* renders a contract

invalid if it results from deceit caused by words or 'insidious machinations' (*maquinaciones insidiosas*) – deceptive or underhand conduct – that lead the deceived party to enter into a contract he or she would not otherwise have entered into. In the contractual area, *dolo* refers to bad faith in general, and, in its strictest sense, to *influencia indebida* ('undue influence', one of its common synomyms). In the widest civil scope, *dolo civil* is equivalent to 'conscious guilt', or 'civil guilt involving negligence'. To complicate matters further, *dolo* has its place in criminal law as well, being equivalent to 'malevolent intent' or *mens rea*. Translating *dolo* as 'fraud' would not, therefore, convey the strict meaning of the word, and, as with *causa contractual*, I suggest translating it, using its calque, as *dole* (Whincup, 1996: 258).

We are in similarly dangerous lexical territory in relation to the English word 'fraud'. A term used mainly in the area of tort in American law, this is, more often than not, translated into Spanish by its cognate, *fraude*. However, *fraude*, according to the *Real Academia Dictionary* (*DRAE*) is an act that constitutes an attack against the state or an individual, or, alternatively, a crime committed by a person who is responsible for supervising the performance of contracts at large. This makes 'fraud' and *fraude* a perfect example of the kind of false cognates that should be avidly avoided.

'Flexible' adjectives in American contract law

Discussion of 'flexible' adjectives in American common law requires paying attention to the different hermeneutical strategies that are deployed to interpret texts in the two systems. These differences constitute the rationale behind the use of the adjectives I am about to analyse.

In general terms, interpretation in Spanish law, as a system of civil law, proceeds deductively, working from the general rule to the particular case. In contrast, the American system is based upon induction from particular case to general rule. Nevertheless, even if the procedure to interpret contracts is ostensibly similar in both systems – namely the literal rule, plus some contextual analysis in case of repugnancy or ambiguity – contextualisation is, in fact, applied with different grades of subjectivity in the hermeneutic process of each country. Common law systems pay much more conscious attention to the word of the law than to extrinsic issues, whereas continental systems, indeed that of Spain, resort to context when the intent of the legislator is not clear, or the contractual text is ambiguous as to the parties' intentions. This is exemplified by the explicit stages in the Anglo-Saxon hermeneutic process, interpretation and construction, which do not exist in the Spanish system. This linguistic weight translates into a tension between the precision and accuracy with which the law wishes words to be used, and the strategic flexibility it desires to achieve.

Legal texts in Spain are, like those of their continental fellows, intentionally open-ended and general. Nevertheless, to fully understand civil law one must realise that continental Europe received civil law from ancient Rome, but did not retain it in the same way everywhere (Tetley, 2000: 3). Scotland, for example, retained it without codification, and, outside Europe, other places like Quebec or Louisiana developed their own codifications. In Europe, codes like those of unified Italy (1865), Portugal (1867) and Spain (1889) were directly influenced by the French Civil Code, which is also called the *Code Napoléon* to reflect on the achievements of the French

Revolution. The philosophy underlying civil law during the drafting of the code was to provide a comprehensive set of codes adopted by legislature, set forth in a logical scheme, addressing all issues. The only valid source of law is legislation, by virtue of springing from a competent legal authority, being jurists, not judges, the sole drafters and interpreters of law. Other European codes like the German (1990) or the Swiss (1912) are later formulations of the primitive version that do not retain the original's flavour, showing variations in style and hermeneutics.

The sources of Spanish legal regulation, as a pure civil system, are legislation, custom and general principles of law, in that order, with legislation consisting of the Constitution, as the law of laws (Borja, 2000: 86); organic laws (which depict the fundamental rights and liberties and are traditionally organised in codes); ordinary laws (of residuary importance); decrees; and delegated legislation or by-laws. For countries where codification is the primary source of law, texts govern the dynamics of legal activity at large. As Bender (2003: 2) points out, legal texts in Spanish have to be interpreted according to their 'ordinary' meaning, 'but also in relation to the context, the historical and legislative background, and the social reality of the time at which they are to be applied, with particular attention to their spirit and aim'. This heavily intentionalist, indeed contextual, accent implies that texts are to be construed as a whole and analysed in the light of their overall meaning. It likewise follows that firstly they must be drafted so as to adapt flexibly to the desired results in each case. From this point of view, over-generalisation is a bonus, not a liability, of the system.

In contrast, in the inductive legal tradition of common law, interpretation is primarily literal and based upon word-by-word construction, as the Literal and Golden rules of interpretation dictate. In accordance with this system, English legal texts have to aim, ideally, for exegetical autonomy. In other words, the text itself is supposed to supply all the data necessary for its own clarification and application. In Anglo-Saxon texts every word has its own specific weight. Consequently, to construe and apply the legal text, words have to be dismembered and pulled apart so as to disambiguate the text. Then, and only then, is the relationship between context and cotext, or the written context of the text itself, to be taken into account.

Literal, or textual, interpretation does not necessarily pose problems as long as the process takes place within the borders of 'simple transposition' (Šarèeviæ, 1997: 15), or translation within the same system, as for example in the case of mixed systems of law like those of Quebec, South Africa or Louisiana. Absence of this kind of problem also takes place in the domain of specialised vocabulary with a univocal sort of meaning.

Nevertheless, irresolvable problems in comprehension arise when haziness exists on the lexical level. A typical example is *Frigaliment Importing Co.* v. *BNS International Sales Corp.* (Schane, 2002: 5), where the judge had to decide upon the broad or narrow meaning of the word 'chicken'. Did the term here mean 'a young chicken suitable for broiling and frying', or a 'stewing chicken' (2002: 6)? These broad and narrow meanings of the word led presiding Judge Friendly to pronounce the word generically 'ambiguous' when the supplier sued for having received an unwanted type of item. Typically, uncertainties of this nature are regarded as hazards for comprehension and tend to be solved by means of legal definitions and lists (Tiersma, 1999: 116). By the same token, ambiguity, like vagueness, can also be seen as a resource for ensuring pliability. Such is the case with well-known, frequently used

adjectives like 'reasonable', 'due', 'actual' or 'fair', which act as wildcards to grant latitude to judges. According to Tiersma (1999: 80), this kind of term permits legislation to avoid articulating in advance exactly what is included within it, permitting the law to adapt to differing circumstances and communities within a jurisdiction, as well as dealing with novel situations which are likely to arise.

Again in the context of contract, even if, as a general rule, 'express' (*explícito* or *manifiesto*, literally speaking) terms in contracts overrule other legal sources in their interpretation, sometimes silence is generated by the legal terms – deliberately or not.[5] This enables judges to fill in the blanks of that silence in the way they consider most appropriate or reasonable, in order to avoid injustice and favour the intention of the parties. This is the point when we come to the question of implied terms. Bryan Gardner (1999: 758) distinguishes between terms 'implied in fact' and 'implied in law'. I translate 'implied terms' partially as *términos tácitos* or *sobreentendidos* in Spanish, to mark the difference between those tacitly agreed upon by the parties and those that legislation, case law or the court determines.

A similar process occurs with the words 'actual' and 'constructive', inasmuch as the latter – translated correctly into Spanish both as *analógico* and *presuntivo* (Alcaraz and Hughes, (1993: 82)[6] – refers to the pragmatic task carried out by the court in assigning meaning at its discretion. 'Constructive', is, in fact, the antonym of 'actual'. The latter takes place in fact, but the former exists because the court is empowered to assign it legal force in order to avoid the partial or fragmentary effects that might take place if the actual meaning were applied. None of these terms can be translated literally into Spanish for two related reasons: first, because they are the result of a very particular way of viewing legal interpretation that is not shared by civil law cultures and, secondly, because of the consequently higher degree of discretion granted to courts in the common law system. As examples one could cite, in Neil Cohen's words,[7] the 'implied guarantee of merchantability' – which refers to the alleged quality of merchandise in a specific transaction, as assumed by the court – or 'constructive receipt', which refers to merchandise delivered in what the court considers a reasonable amount of time, which may or may not coincide with the goods' actual date of delivery. Terms such as these cannot be translated successfully into Spanish without additional explanation.

Issues in interpretation

The lexical problems above illustrate divergences in interpretation techniques, materially reflected in the language and in the impossibility of transposing lexical terms, and have to be understood as the direct consequence of different attitudes about the nature of law, the role of law in society and the organisation of the legal system in each legal tradition (Merryman, 1985 in Duro, 2005: 569). They are also deeply rooted in cultural and epistemological trajectories. In the area of business interaction and trade agreements, major anthropologists and social scientists (Reed Hall and Hall, 1990: 25; Schuster and Copeland, 1995: 10) talk about low context, direct style cultures and about high context, indirect style ones. In the first group, the final outcome of a negotiation is usually specific and concrete, as the ultimate aim is for the contract to encompass every possible contingency that may take place in the

course of its performance. In contrast, in high context cultures, the approach is much wider in scope, as drafting clauses in a very detailed way would prove to be a hindrance for the flexibility of agreements developing in the ever-changing circumstances of real life. Accordingly, Spain is a case of high contextuality and indirect style, whereas the United States presents the opposite case.

These different cultural approaches have very much to do with the way in which the legal traditions in each of these countries articulate their contract law and interpretation. Specifically, Spain has a compact body of rules for contract, but legislators and drafters try to make their assertions as general as possible, and the attempt to cover every contingence and detail of reality and its multiple complexities is out of the question. In contrast, in the ontological interpretive technique of the United States every word counts, and it is the aim of the contract to be able to capture every possible eventuality that may arise in the course of a deal.

This latter argument is reinforced by the rules that regulate contractual ties in the United States, on the one hand, and those in Spain, on the other. Indeed, as Lawrence Solan (2005: 78) points out, the civil code of Spain allows for a contract to be construed according to the intent of the parties entering the agreement, whereas in the United States the *parol rule* forbids courts to make use of evidence other than the language of the contract itself when terms are unclear. Solan himself advocates contextualising hermeneutics to be implemented in order to avoid vagueness, stating that some states in the country are more lenient than others. Still, and with the blessings of New Textualists like Justice Antonin Scalia (Solan, 2005: 85), who regard the language in the text as a sufficient basis for reaching fair decisions, the *parol evidence rule* still applies in most cases.

However, when focusing on the area of contract, the universality of merchant law has to be considered. 'The phenomenon of commercial exchange spreads worldwide and goes beyond cultures and frontiers, being shaped by progress and evolution' (Duro, 1997: 13, my translation). This internationality makes commercial law different from any other aspect of juridical systems at large and brings corporate culture and law closer as globalisation advances. The presence of businesses in Spain and countries with an Anglo-Saxon legal culture, specifically Great Britain and America, is a fact, as globalisation has opened up these markets to international business opportunities.

The arguments above gain momentum with the recent debate and interest that has arisen with the rise of 'mixed jurisdictions' (Tetley 2000: I) as a result, firstly, of the European Union bringing together many legal systems under the same single legislature. Still, most important of all, 'mixed jurisdictions' also occur because of what Olsen Ghirardi terms as the 'Americanization of law' (2003: 6), very much in connection with Vogt's arguments at the beginning of this article (Vogt, 2004: 14). According to these authors, the Western Bloc promotes and supports globalisation and a restrictive theory of sovereignty, with the USA supporting the development of multilateral institutions like the United Nations, the World Bank and the International Monetary Fund. In this context, the need to understand the unique quality of each legal tradition – indeed, that of Spain, in the scope of this article – and its value in the context of new transnational agreements would become more imperative than ever in order to achieve harmony, understanding and respect towards national hermeneutical tools.

Conclusion

In this study, I have sought to examine a small number of lexical phenomena that occur in Spanish and American contract law. The article has drawn attention to semantic nuances in the usage of some key legal terms in each language, which I have mapped onto the legal sources and interpretive strategies of their different legal traditions. The difficulty in translating between the two specialised languages, from my point of view, does not lie in the presence of archaic or technical terms in their lexicons. Rather, words identified as *false cognates* or *false friends*, with a common origin, tend to result in mistranslation, precisely because of their apparent similarity. Therefore, I have identified words like *causa contractual* and *dolo*, normally mistranslated as 'consideration' and 'fraud', which risk producing troubling lexical inaccuracies.

I have also analysed adjectives used in American contractual law such as 'express', 'implied', 'actual' and 'constructive'. These terms exemplify the discretion bestowed upon the courts where judges' interpretation of the case is of a major importance. Translating such terms literally into Spanish ignores the fact that their meanings are rooted in the way interpretation is undertaken in common law.

As I pointed out at the beginning of this article, legal texts are the product of a specialised professional community, but they are also connected to the historical and cultural background of their legal systems, the public who receives them and the extratextual reality the language aims to regulate. Achieving effective communication between legal systems in a global world as well as drafting and translating texts to convey equivalent meaning in different legal systems, is the task and responsibility of both the drafter of law and the legal translator and interpreter. In the context of globalisation, equality and equity in commercial transactions will only be attainable if we remain aware of the uniqueness of each legal culture and its instruments of communication. If we, as linguists and translators, manage to accomplish this, we will be on our way to a fairer world, at least as far as agreements between individuals in the realm of private law are concerned.

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Notes

1 The *Real Academia Española* is the language-regulating body in Spain, and its Dictionary (known as the *DRAE*) controls new lexical incorporations and variations not only in Castilian, but also in other regional and international varieties of Spanish.

2 A 'xenism' is the incorporation of a new expression from another language without any morphological, phonological or semantic change in a process currently known as *transposition*.
3 In contrast with xenisms and calques, false loans are familiar words usually found in the target language, whose original or translation in Spanish is long forgotten.
4 It should be noted that in French law *dol* refers solely to conduct, not words.
5 Lawrence Solan points out that this very silence is often marked by the judge's reluctance to meddle in individuals' private affairs (notes from Professor Solan's lectures in contract law, Brooklyn Law School, Spring Semester 2004).
6 'Constructive' is often literally translated into Spanish as *constructivo*, especially in the context of insurance policies, and, as Rodríguez Carrión (1992: 85) points out, it belongs to one of those terms within the field that belong to a different legal system and do not convey the same sense intended by English.
7 Notes taken from Neil Cohen's lectures on contract at the Brooklyn Law School, Spring Semester 2004.

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María Ángeles Orts Llopis is a Senior Lecturer at the English Philology Department, University of Murcia, in Spain, where she teaches Financial, Business and Legal English. She started developing her professional activity very early as a translator in the fields of Law and Economics, working for several national and international institutions. Her research interests focus on the discourse analysis and translation of the language of Economics, Business and Law. Her current research activities involve the study of contract language in English and Spanish, as well as the textual vagueness and ambiguity issues that arise out of these two legal traditions. For this purpose she recently spent a semester as a Visiting Fellow at the Brooklyn Law School, Brooklyn, NY, USA. *Address*: Departamento de Filología Inglesa. Facultad de Economía y Empresa. Campus de Espinardo, 30100 Murcia, España. [email: mageorts@um.es]