(a) The legal systems

Clearly there is no requirement for translators to be experts in the law, but equally obviously they need a good working knowledge of the main outlines of both the Anglo-American system of law and the legal system of the other language in play. In Chapters 3 and 4 we examine the leading features of the British system, particularly in relation to the three major sources of English law (common law, equity and statute law).

(b) Bottom-up linguistic processing

By this we mean the process of understanding a text starting with the smallest units of meaning (phonemes and morphemes) and gradually relating them to the units situated above them on the scale until the entire text has been comprehended. From this point of view, full understanding of the text is the last link in a long chain of partial meanings gradually increasing in length and complexity as the decoding process advances. These issues are dealt with in this chapter and the following one.

(c) Top-down linguistic processing

This model is the corollary of the previous strategy of text interpretation. In this case, the process of understanding begins with the identification of large blocks of text viewed not as piecemeal chunks of meaning, but as instances of text types or genres – in our case, legal genres, such as contracts, judgements and statutes. The advantage of this approach is that translators can operate half-intuitively on the basis of pragmatic expectations as to the likely function and meaning of the text. The final version emerges from a gradual process of confirmation or elimination until uncertainty ideally disappears. This model assumes that the native speaker of a language brings their previous knowledge and experience to bear on the original text as a grid or framework into which the actual linguistic content is to be fitted. Familiarity with the legal genres provides the translator with a handy tool for rough-hewing the original, and the translation can then be shaped and refined on. A detailed study of this process will be found in Chapters 5 and 6.

3. The leading features of legal English

Like its counterparts in other languages, legal English is a complex type of discourse. As we shall see in section 4, native speakers of English have recently reacted against the perceived obscurity of the language of the law. The 'Plain

English Campaign' has had some effect on the legislature and the judiciary, which have been forced to clarify and simplify legal language, or at least those parts of it that ordinary people need to understand in order to use the system to defend their rights and settle their differences. However, many lawyers continue to argue, with some justification, that technical accuracy is an essential prerequisite of good justice, and that if linguistic precision is watered down to suit the demands of an uncomprehending majority, legal certainty will all but disappear. There is a danger, in other words, of throwing out the baby with the bath-water. For this reason, it is unlikely that the 'Plain English Campaign' can go much further than ensuring that the court forms used by prospective litigants, or the style used by judges in explaining technical matters to the parties, are phrased as simply as is compatible with good law. Generally speaking, translators should expect to face some quite daunting linguistic tasks in preparing their versions of legal originals.

The following is an overview of some of the main features of legal English:

(a) Latinisms

Despite the native origins of many of its most characteristic terms, legal English has not entirely escaped the influence of Roman law and the Latin in which it was administered. It is not difficult to see why. In the first place, English law grew out of a system that evolved in the Middle Ages when Latin, bolstered by the power and prestige of the Roman Church, was the *lingua franca* throughout Europe for written texts and for intellectual exchanges. Secondly, Roman law was a coherent written system that, for centuries, had been developing over a wide area of Europe and had the force of an institution. It was inevitable, therefore, that some of its precepts and formulations should become enshrined in the texts and the professional speech of English lawgivers who shared a common culture with their colleagues elsewhere. Even today the famous tag *Nulla poena sine lege* ('No punishment except in accordance with the law') is found in the writings of British lawyers as well as in those of their Continental colleagues. Among hundreds of Latin phrases in common legal use, we have selected the following examples as a reminder that translators cannot always assume that Latin can be left untranslated. The decision as to whether to translate or not must be made in accordance with standard practice among the members of the legal community in the target-language system:

> writ of *fieri facias [fi. fa.] ' you may cause it to be done'* (*auto de ejecución de una sentencia,* perhaps *bref de fieri facias, Pfändungsanordung, Vollstreckungsbefehl*)
> *prima facie "at first sight"* (*a primera vista, légitime, beim ersten Anschein*)
> *bona fide* (*de buena fe, de bonne foi, in gutem Glauben*)

bona fide error (*error involuntario, erreur de bonne foi, fahrlässiger Fehler*)
res judicata (*res judicata, cosa juzgada, affaire jugée, rechtskräftig entschiedene Sache*)
restitutio in integrum 'restoration to the original position' (*restitución o devolución íntegra, restitution, Wiedereinsetzung in den vorigen Stand, Wiederherstellung des ursprünglichen Zustands*).

In some cases English makes use indistinctly of either the original Latin phrase or a calque, e.g.:

onus probandi/burden of proof (*carga de la prueba, charge de la preuve, Beweislast*)
mors civilis/civil death (*muerte civil, mort civile, bürgerlicher Tod, Verlust der Rechtsfähigkeit*)

(b) Terms of French or Norman origin

Here again the terms concerned are survivals from the earliest stages of development of English law. Following the successful Norman invasion of 1066, the new masters of the country brought their own customs and language with them and justice was administered in their native Norman French. Even the royal seal carries a French motto (*Dieu et mon droit*) as does the badge of the Knights of the Garter, the highest order of English knighthood (*Honni soit qui mal y pense*). Here are some examples:

profit à prendre (*el usufructo, los objetos extraídos, los beneficios conseguidos, profit à prendre, Recht, die Nutzung aus einem fremdem Grundstück zu ziehen*)
chose (*objeto, cosa, objet, propiedad personal, Sache*)
feme sole: (*mujer soltera, femme non mariée , unverheiratete Frau*)
lien (*derecho prendario, derecho de retención, embargo preventivo, droit de rétention, Pfandrecht*)
on parole (*en libertad condicional, en liberté conditionnelle, gegen Ehrenwort freigelassen*)

As is well known, among the many forces that shaped the English language, the French influence after the Norman Conquest was paramount. As a result, thousands of English words are Old French or Norman in origin, and the rules of word-formation have been profoundly marked by this contact. Our list could therefore be wearyingly long, but for practical purposes it is worth noting that many legal terms ending in '-age' came into the language via French and bear the meaning of some specific service, right or duty, including the notions of

indemnity, prize, reward, contribution, and so on. Here are some of the most common:

salvage (*salvamento, premio por salvamento, prime de sauvetage, Bergung, Bergungsgut*)
average (*avería, contribución proporcional al daño causado por la avería, averies, Havarie*)
beaconage (system of beacons or markings at sea to guide navigation, payments made for the maintenance of the beacons)
towage (*remolque, derechos por remolque, droits de remorquage, Schleppen, Schlepplohn*)
pilotage (*practicaje, derechos de practicaje, droits de pilotage, Lotsen(dienst)*)
demurrage[1] (*estadía, demora, penalización/gastos por estadía/demora, surestarie, Überliegezeit*)
anchorage (*fondeadero, derechos de anclaje, derechos que se pagan por fondear, droits de mouillage, Ankern, Ankerplatz, Ankergebühr*)
damage (*daño, desperfecto, perjuicio, dégâts, Schaden, Beschädigung*)
damages (*[indemnización por] daños y perjuicios, dommages-intérêts, Schadensersatz*)

(c) Formal register and archaic diction

English legal language is no exception to the universal tendency toward stiffness and formality that marks this form of discourse, a tendency heightened by the unusual density of old-fashioned syntax and antiquated vocabulary. In part, this is due to the preservation of terms of art that were coined many centuries ago. As we have said, lawyers are reluctant to depart from these terms precisely because, having fallen out of ordinary use – if, indeed, they ever really belonged to it – they are less prone to semantic change and so have the advantage of clarity and certainty to those who understand them. It should also be remembered that, in the nature of legal process, references are constantly being made to very old texts, such as judicial decisions, wills, contracts or venerable textbook definitions, which are quoted in support of legal arguments about the continuing validity of rules, doctrine or precedents.

Naturally enough, the syntax of contemporary judgements, deeds and statutes, though highly formal, is not strictly speaking archaic. In texts of these kinds translators will not find grammatical dinosaurs like the old '-th' ending of verbs in the third person singular of the present tense, nor the liberal sprinkling

[1] Compare 'demurrer' (a pleading that accepts the opponent's point but denies that it is relevant to the argument) and the formal verb 'demur' (a pleading that accepts the opponent's point but denies that it is relevant to the argument), e.g. 'The judge demurred to that part of counsel's argument'. Originally from Fr. *demourer* (to remain, to stay, to spend time).

of 'doth', 'does' or 'did' preceding the infinitive which, in older English, was a regular, non-emphatic alternative to the simple present and past. But they must expect occasionally to have to deal with these and other syntactic oddities when the text for translation quotes passages from older writers. For example, the following is an extract from a deed: "This indenture made the ninth day of May 1887... *witnesseth* that..." (attests or affirms that...). Even nowadays we occasionally come across antique-sounding phrases and constructions like "an action *sounding in* damages" (i.e. one brought by an unpaid creditor for damages rather than simply to recover the debt); or "it does not *lie in the defendant's mouth* to say that..." (the defendant does not have the competence or right to say that...); or, as an alternative to the preceding phrase, "the defendant *cannot be heard to say...*". It is extremely unlikely that phrases of this type would now be heard outside of a courtroom, though some of them were once common enough.

Along the same lines, Garner (1987) lists lexical choices marking the stiff formality, or downright pedantry, of some members of the legal profession. Some insist on using the longer rather than the shorter word, or the older rather than the newer, e.g. 'imbibe' rather than 'drink', 'inquire' instead of 'ask', 'peruse' in preference to 'read', 'forthwith' as an alternative to 'right away', 'at once' or 'immediately', and so on. Few people nowadays would see the point of preferring 'impugn' to 'challenge' in the sentence 'An attempt was made to *impugn* the validity of a private Act of Parliament'. It is hard not to see a certain amount of smugness, sexism or old-school-tie exclusiveness in the habit of judges who refer to their judicial colleagues of the same rank as 'brethren' or 'brother judges'. In such cases it is very unlikely that other languages will possess a matching pair or a precise means of striking the equivalent note. If this is so, translators are perfectly entitled to act as though the term used had been the standard one, since all that will be missing from their versions will be the rather embarrassing and wholly meaningless tone of self-satisfaction.

However, markers of politeness and respect are part of every language, and we are very far from holding that translators are exempt from the rules of social etiquette or that they are free to coarsen the tone of highly formal originals. The contrary is true, but the sensible tactic would appear to be to follow the rules of register in situations that demand courtesy and deference. In the superior courts, British judges refer to their fellows as 'my learned friend' or, in the House of Lords, 'my noble and learned colleague' and, collectively, 'your Lordships'. Spanish judges are normally called *su señoría*, whatever court they are sitting in, and they might well refer to their colleagues as *mi docto colega* or address them collectively as *sus señorías*; and these, we would argue, are neither inaccurate nor socially absurd equivalents to the English terms. What the translator should not do is promote non-British judges to the ranks of the British aristocracy in translating into English, nor lower the register to street levels when translating out of it. Similarly, usable equivalents can almost certainly be found

for the solemnity with which counsel request permission to speak by using phrases like 'With your Lordship's permission' or 'If it please the court' (*con la venia, si Monsieur le juge permet, Mit der Erlaubnis des Gerichts*).

(d) Archaic adverbs and prepositional phrases

A special case of fossilized language is the persistence in legal English of compound adverbs based on the simple deictics 'here', 'there', 'where' and so on, often referring to the text or document in which they appear or to one under discussion. Common examples include the following:

> hereinafter (*in what follows, below, en adelante, en lo sucesivo, más abajo, ci-après, nachstehend, im nachstehend, im folgenden*)
> thereunder (*by virtue of which, subsequently, below, en virtud del mismo, selon lequel, en-dessous, unten, unter, nachstehend*)
> hereby (*as a result of this, por la presente, par la présente, hiermit*)
> thereby (*por ello, por cuyo motivo, de ce fait, dadurch*)
> whereby (*because of which, por donde, por lo cual, grâce auquel, selon lequel, par le fait que,* perhaps *mit dem, mit dessen*)
> thereunto (*in the document or place referred to, al mismo, al documento aludido, hasta dicho lugar,* perhaps *dans le document cité, bereits genannt/erwähnt)*

A similarly archaic or solemn tone is achieved by the use of prepositional phrases like those listed below, which abound in legal texts:

> pursuant to (*en cumplimiento de, conformément à, gemäss, zufolge, im Sinne von)*
> without prejudice to (*sin perjuicio de, sans préjudice de, ohne Schaden für*)
> subject to (*sin perjuicio de lo dispuesto en, sous réserve de, unterworfen, abhängig von*)
> at the motion/instance of (*a propuesta de, sur la demande de, auf Veranlassung von)*
> notwithstanding (*no obstante, a pesar de, ce nonobstant, ungeachtet, unbeschadet, trotz, abweichend von)*

(e) Redundancy ('doublets' and 'triplets')

The well-known fastidiousness of lawyers frequently takes the form of reduplication, in which two, and sometimes three near synonyms are combined. In some cases, translators may find similar combinations ready to hand in their own languages. Otherwise, they will have to decide whether, on the whole, the English expression implies a genuine distinction, in which case a fairly literal

rendering seems appropriate, or an emphasis, in which case the addition of an adjective or adverb conveying the notion of generality could well be the best solution. For example, from the list below, 'without let or hindrance' might be translated as though the original said something like 'without any impediment whatsoever', whilst 'null and void' could be rendered as 'utterly void, void *ab initio*', etc. There is, of course, the possibility that the original phrase contains a mere tautology exhibiting neither subtlety nor rhetorical aptness, i.e. what is sometimes called ' a distinction without a difference'. If this is the translator's conclusion, there would seem to be two options open: silent simplification by dropping the less general term, or simple reproduction. Lawyers, after all, are not always breathtakingly compelling speakers or writers, and it is likely that most languages would tolerate literal renderings of rather weak pairings like 'final and conclusive', even if conscious stylists would not applaud them. On the other hand, the doublet 'alter and change' is a candidate for simplification to the equivalent of 'alter' or, alternatively, to some such treatment as 'alter in any way'. In view of the considerable variety of possible solutions, we shall leave it to readers to make up their own minds about the best way of dealing with the following common examples:

false and untrue	have and hold	full, true and correct
sole and exclusive	each and every	rest, residue and remainder
request and require	without let or hindrance	give, devise and bequeath
seriously and gravely	fit and proper	nominate, constitute and appoint
alter and change	mind and memory	cancel, annul and set aside
final and conclusive	full and complete	
null and void	fair and equitable	
known and distinguished as	aid and abet	
force and effect	aid and comfort	
last will and testament	goods and chattels	

(f) Frequency of performative verbs

In speech act theory, performative utterances are those by which the state of affairs expressed by the words comes into being, or those that commit the speaker to carrying out or performing the actions expressed by the words (Austin 1962). For instance, when a court gives judgement on an issue, the decision comes into effect through the very act of pronouncing the operative words, or signing and

delivering the document that contains them. Performative verbs are those that constitute the nucleus of such statements or declarations. The number of such verbs in a given language is necessarily quite small, but given the binding nature of legal relationships and judicial decisions, verbs of this type are used particularly frequently in legal texts and contexts.

Among the most common performative verbs are 'agree', 'admit' (recognize, allow), 'pronounce' (declare), 'uphold' (maintain, affirm), 'promise', 'undertake' (contract or commit oneself), 'swear' (promise), 'affirm', 'certify', 'overrule' (disallow) and so on. The simple verb 'do' has a performative function – as well as legal connotations – when it is uttered by the spouses at the marriage ceremony in answer to the question, 'Do you, X, take Y to be your lawful wedded wife/husband...?' Here are some common legal performatives:

> Both parties to the contract hereby *agree* to the following conditions....
> The Board of Trustees does hereby *confer* upon John Smith the degree of...
> An Act to *amend*...
> *Be it enacted*...
> I hereby solemnly *swear* to tell the truth, the whole truth and nothing but the truth.

Performative verbs can also appear in the past tense, although they are no longer truly performing the operation in such cases:

> The doctor *pronounced* the victim dead at the scene.
> The Court of Appeal so *held* when dismissing an appeal by the defendant.

There are many more examples of performative verbs in Chapter 4, where we deal with legal genres such as contracts, powers of attorney and wills.

(g) Changing registers: Euphemisms and contemporary colloquialism

Legal language may define a firearm (*arma de fuego, arme à feu, Schusswaffe*) as 'a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged'. In an elaborately formal discourse type like this the use of euphemisms is almost inevitable, especially in those areas of law concerned with the harsher or more unsavoury aspects of criminal and other unlawful activity. And in the traditionally staid or puritanical moral climate of the English-speaking countries, linguistic reticence is particularly noticeable, as one would expect, in the drafting (writing) of the laws dealing with sexual offences. There are, for example, a number of offences of 'indecency', but while

most people would probably agree that this general term is formal rather than actually euphemistic, the same cannot be said of the standard definitions of 'indecent exposure' or 'gross indecency'.

'Indecent exposure' is almost always committed by a man who exposes what is technically called 'his person' in a public place. One can think of a number of bad reasons, but no good ones, why 'person' is used here instead of 'penis'. Certainly, in more forthright jurisdictions, that or 'sexual organs' would be the term chosen, and translators untrammelled by the coyness that affects the British legislators could certainly plump for either of them. No doubt some translators will find similar restraints operating in their own languages, but it is likely that, in at least some cases, an equivalent like 'exhibitionism' will be available as the name of the act.

The term 'gross indecency' is even more clearly euphemistic, since it refers to explicit sexual acts, including 'buggery' (anal penetration) performed in public places. Literal translation of the term is unlikely to suggest this, so that, depending on the linguistic habits of the target audience, translators may have to be guided by the definition of the offence rather than the mere name. We are aware that there are theorists who insist that legal terms of art must be translated as literally as possible and that it is not the business of the translator to explain the implications of the source language terms to the new audience. However, it is our view that this seemingly high-minded restriction can all too easily become an excuse for unprofessional indifference to the implications for recipients of the actual words used. The intended audience surely has a right to expect the translator to avoid vagueness and misleading suggestion. And in any case there is no better justification for providing muddled or confusing versions of the terms we are discussing than there would be in the case of 'simpler' or more familiar offences like fraud (*estafa, fraude, Betrug*), theft (*robo, vol, Diebstahl*), burglary (*robo con escalo, vol avec effraction, Einbruch[sdiebstahl]*) or murder (*asesinato, meutre, Mord*).

A euphemism that tends to amuse non-English-speaking students of legal translation is the solemn announcement following the discovery of a crime (often a murder) that 'a man is assisting police with their enquiries'. Of course there are excellent procedural reasons for choosing this form of words, and it would be wrong to sneer at any means used to protect the reputation of the innocent or to uphold the democratic principle of the presumption of innocence. But there is no escaping the linguistic fact that literal renderings of this phrase into other languages would most probably lead the audience to believe that Sherlock Holmes had come again, or that Scotland Yard had fallen on hard days and had to call upon the services of members of the general public to help solve its cases. Once again, the translator would be strongly advised to follow the natural habits of the target audience and go with a version indicating that 'police are interrogating a suspect', or words to that effect.

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Euphemism of a different kind is found in traditional and rather ornate expressions like the following, all of which invoke royal or divine intervention to describe what are essentially mundane though no doubt unfortunate situations:

> **Detention during Her Majesty's pleasure**. Phrase used to mean detention for an indefinite period; in the case of adults found 'not guilty by reason of insanity', detention is in an approved psychiatric hospital; for persons below the age of 18 found guilty of murder, detention is in a young offender institution. The expression is also euphemistic because of the use of the milder word 'detain/detention' in preference to 'imprison/imprisonment' or 'confine/confinement'.
>
> **Act of God** (*caso fortuito o de fuerza mayor, force majeure, höhere Gewalt*). Expression most often found in contract law and insurance cases to refer to a natural disaster, or to a calamity attributable to the forces of nature, that could neither have been foreseen nor guarded against. If found proved in the judgement, it destroys the claim. The piety of the phrase is likely to be of little consolation to the losing claimant.
>
> **Standing mute by visitation of God**. Another case in which a cloak of supposedly religious reverence is thrown over the accused's physical or mental incapacity to answer the charge. The phrase is used when the accused is refusing to plead to the charge and the jury must decide whether he or she is 'mute of malice', i.e. out of sheer contumacy, or 'by visitation of God', i.e. through some physical or mental impairment of his or her faculties. The jury, in other words, has to decide whether the prisoner is fit or unfit to plead

However, no form of discourse can feed off the past alone, and translators will come across occasional signs of a more contemporary idiom creeping into both the speech and the writings of lawyers. Examples of this newer note follow. They are all to be found in the authoritative Blackstone (Murphy et al. 1998), a pillar of the establishment by no means given to frivolity. It will be noticed that some of these new or relatively new terms of current English law are not just informal but actually on the borderline between familiar colloquialism and slang – a sign, perhaps, that the streetwise tones of the marketplace are starting to make inroads into the patrician accents of the courtrooms:

> **Hacking** (*piratería informática, piratage informatique, unerlaubtes Eindringen in Datenfernübertragungsnetze*). Often malicious. Like many terms relating to information technology, frequently found untranslated in many languages.
>
> **Insider trading** (*delito de iniciados, tráfico con información privilegiada,*

délit d'initié, Insider-Geschäft, illegaler Aktienhandel auf Grund innerbetrieblicher Informationen). Stock-exchange term originally, although the idea of an 'inside job' has been long familiar to detectives.

Money laundering (*blanqueo de dinero, blanchissage d'argent, Geldwäsche*). The everyday metaphor makes this an obvious candidate for literal translation, at the translator's discretion.

Mugging (*atraco, tirón, robo callejero con amenazas y agresiones, vol à l'arraché, Raubüberfall*). A term now familiar in magistrates' courts and which has many counterparts in earlier stages of British society. Most contemporary target-language terms for street attacks involving small-time robbery will serve the purpose.

Rogue (*pícaro, bribón, pillo, delincuente, impostor, fripon, Gauner*). As a noun, a slightly Victorian term, still used by some judges. In attributive use, probably influenced by 'rogue elephant' it is now found in 'rogue trader' (*operador fraudulento en Bolsa, opérateur véreux, Gauner der Wertpapierhändler,* in the case of Nick Leeson).

Stalking (*acoso, acecho, persecución obsesiva o psicopática, traque, Stalking*). Term describing a peculiarly contemporary form of neurotic or psychopathic behaviour, usually that of a male who pesters a female victim by following her about, communicating with her against her will and terrorizing her with unwanted attentions or veiled threats. Now a recognized offence, though translators should distinguish it from more common forms of sexual harassment.

Tip-off (*chivatazo, dénonciation, Warnung, Hinweis*). Once thieves' cant and police slang, this term has now found its way into judges' handbooks.

4. 'Legalese' and 'The Plain English Campaign'

So far we have been examining some of the specialist terms actually used by lawyers in the course of business. But in dealing with texts concerned with court proceedings translators will often face a considerable mixture of styles and registers. There is the legalese of the professional lawyers, the everyday language of lay witnesses and litigants, the slang of the police and the criminal underworld and the often extremely technical jargon of the reports and testimony of expert witnesses who may be doctors, surgeons, forensic pathologists, bankers, brokers, architects, builders, technicians, engineers or members of any profession whatever, depending on the facts of the case. In other words, by no means every term in a legal text for translation belongs to the law itself, and in fact it is often the technical issues at stake that give translators most trouble.

The technicalities of legal vocabulary present a serious challenge to the

translator or interpreter, while the tortuous syntax and the antiquated diction favoured by many lawyers are equally baffling to those unfamiliar with forensic method. It is arguable that a justice system genuinely concerned to safeguard ordinary people's rights should find some means of administering the law in a language that those people can understand, and this is precisely the aim of the pressure groups and lawyers who are behind the 'Plain English Campaign'.

Nevertheless, it is doubtful whether this attempt at simplification can ever be more than a cosmetic operation designed to reassure the general public. In the first place lawyers, like members of any other profession, are trained in the mysteries of their trade and tend to perpetuate the language used by their predecessors and teachers before them. Second, the scientific basis of the law is enshrined in the texts of the past (statutes, procedural rules, guidelines, decided cases, judgements, pleadings, counsel's arguments, and so on) and to ask contemporary lawyers to write and speak as if these texts had never been is as absurd as asking a philologist to strike out of their vocabulary any term no longer current after, say, 1980. We would not thank our solicitors for fighting with one hand tied behind their backs while they are representing our interests. Third, the most cogent reason given by lawyers who stress the impossibility of making wholesale changes to traditional terminology is that the great advantage of the terms to which exception is most often taken is precisely that they are clear and precise. The more precise and unambiguous the terms, they argue, the greater the degree of legal certainty. And it is legal certainty that enables courts to protect the rights of ordinary citizens and therefore provides the best guarantee that justice will be done in the end.

On the other hand, it would certainly not be impossible for lawyers to improve and simplify their syntax, which is proverbially daunting and obscure. Here, the unwillingness of lawyers to pare down their rhetoric, trim their grammar and lighten up their style has more to do with tactics than technique. To put it bluntly, and somewhat cynically, it is well worth their while to keep their clients in the dark. As Jonathan Swift put it long ago, "If my Neighbour hath a mind to my Cow, he hireth a Lawyer to prove he should have it of me". Clearly if the neighbour thought he could convincingly argue his own case, he would save himself the expense of the lawyer's fee and, with luck, get my cow into the bargain. Moreover, lawyers themselves recognize that their language is sometimes not far short of mystification and that it involves them in a power game. The following comment by an author on the subject is of particular interest to legal translators:

> The need to develop the 'special' skills of a lawyer has the effect of excluding non-lawyers from entering into legal discourse, with, it is argued, consequent limits upon the ability of citizens to gain access to justice

> [...]. Getting past the camouflage is one of the major problems lawyers face in reaching an accurate understanding of a foreign legal system. (Holland 1991:88-9).

5. The classification of legal vocabulary

Probably the greatest single difficulty encountered initially by legal translators is the unfamiliarity of the vocabulary characteristic of this type of discourse. Unfortunately there is no way round this problem except the deliberate process of learning. There is no magic wand one can wave. Nevertheless, it is possible to find some semblance of system in the legal lexicon, and this is the point of the present introductory section. Fuller discussion of the points raised here will be found in Chapter 7, which deals with problems of translation as they relate to vocabulary.

As a first step, the lexical items found in any given language can be divided into two groups: symbolic (or representational) items and functional items. The latter type consists of grammatical words or phrases that have no direct referents either in reality or in the universe of concepts, but which serve to bind together and order those that do. Examples from the legal sphere are 'subject to', 'inasmuch as', 'hereinafter', 'whereas', 'concerning', 'under' and 'in view of'. Deictics, articles, auxiliaries, modals and other purely syntactic and morphological markers also belong with this group, as do other more complex units like 'unless otherwise stated', 'as in section 2 above', 'in accordance with order 14' and similar phrases (Harris 1997).

The symbolic or representational group, on the other hand, includes all the terms that refer to things or ideas found in the world of reality, physical or mental. Legal terms of this type may be one-word units ('tort', 'court', 'law', 'right', 'adjudge', 'contract', 'misrepresentation', 'guilty', 'liable', etc.) or compound units ('serve proceedings', 'bring in a verdict', 'evidence in rebuttal' 'tenant from year to year', 'statute-barred claims', 'beyond reasonable doubt', and many others). This group may be further subdivided into three subgroups for any given specialist lexicon: purely technical vocabulary, semi-technical vocabulary, and shared, common or 'unmarked' vocabulary. Let us briefly examine each of these groups in turn.

(a) Purely technical terms

For our purposes, technical terms are those that are found exclusively in the legal sphere and have no application outside it. Examples include 'barrister', 'counsel' when used as an uncountable noun unaccompanied by an article, 'solicitor', 'estoppel', 'mortage', 'breach of official duty', 'serve proceedings',

'refuse leave to appeal', 'bring an action', and so on.[2] Lexical units of this type are distinguished from the others in that they are monosemic and have long remained semantically stable within their particular field of application. For the same reasons, they may be said to be the least troublesome terms for a translator to deal with. Arguments may arise about the best way of translating 'estoppel', 'liferent' or 'usufruct', but there can be no dispute about their meanings or their purely legal function. On the other hand, they are crucial terms in the contexts in which they occur, since the rest of the text cannot be dealt with until they have been understood and catered for.

Because these terms are identified so intimately with the system that spawned them, some commentators believe they are true terms of art and cannot be translated, but only adapted. It is certainly true that the jury system, for instance, is a native English growth that has later been adopted by other legal systems, sometimes with the name included. Similarly, the concept of 'tort' has made itself known to non-English jurists under a variety of names (*agravio extracontractual, derecho de daños*, *préjudice*, *unerlaubte Handlung*, etc.). And 'estoppel' and 'trust' are often left untranslated in essays on comparative law by those who are either unsure of their scope, reluctant to accept the full equivalence of *doctrina de los actos propios, Rechtsverwirkung* and *fideicomiso*, *fidéicommis*, *Treuhandverhältnis* or determined not to relinquish the snob value of the eye-catching anglicism. Whatever decision the translator makes, or is forced to make, there is no question that the term in question is recognized as a full-blown legalism that has to be assimilated and dealt with in the translation.

(b) Semi-technical or mixed terms

This second group consists of words and phrases from the common stock that have acquired additional meanings by a process of analogy in the specialist context of legal activity. Such terms are therefore polysemic, unlike those belonging to the first group. For the translator, terms belonging to this group are more difficult to recognize and assimilate than wholly technical terms. For a start, they are much more numerous and their number is constantly growing as the law changes to meet the developing needs of society. Moreover, they are semantically more complex, involving the translator in a wider range of choices, since group-one words in one language may be translatable by group-two terms in another (e.g. the term 'estoppel' mentioned in the preceding paragraph). Even without that difficulty, translators dealing with terms of this kind face

[2] 'barrister' *(abogado, avocat)*, 'counsel' *(abogado, letrado)*, 'solicitor' *(representante legal, approx. procurador)*, 'estoppel' *(doctrina de los actos propios)*, 'mortage' *(hipoteca)*, 'breach of official duty' *(prevaricación)*, 'serve proceedings' *(notificar la incoación de la demanda, emplazar al demandado)*, 'refuse leave to appeal' *(inadmitir un recurso)*, 'bring an action' *(ejercitar una acción)*.

the familiar dilemma raised by connotation, ambiguity, partial synonymy and the fact that the precise nuance is often context-dependent. An example is the word 'issue' found in the following sentences:

(a) 'The testator died without *issue*', i.e. 'offspring, children' (*descendencia, descendence en ligne directe, Nachkommen*).
(b) 'The parties could not agree on the *issue*', i.e. 'disputed point' (*cuestión, question, Streitpunkt*).
(c) 'The passport was *issued* by the Liverpool office', i.e. 'give out' (*expedir, délivrer, herausgeben*).
(d) 'Parties must wait for process to *issue* from the court', i.e. 'be served' (*notificarse*, perhaps *être notifié, bekanntgeben*).

(c) Everyday vocabulary frequently found in legal texts

This third group, which is naturally the most numerous, consists of terms in general use that are regularly found in legal texts but, unlike the previous group, have neither lost their everyday meanings nor acquired others by contact with the specialist medium. Given the generality of this definition, it is rather difficult to provide telling examples, since virtually any non-technical term will do. However, on the basis of relative frequency of occurrence, the point may be illustrated by terms such as 'subject-matter', as in 'the *subject-matter* of the contract', 'paragraph', as in 'Section 2, subsection 12, *paragraph* (b) of the Act', or 'summarize', as in 'The judge *summarized* the facts of the case'. It may occasionally happen, as with the previous group, that a group-three word is best translated by a group-one or group-two equivalent as a matter of traditional usage, e.g. English 'system' will normally be Spanish *sistema*, but 'legal system' is best rendered as *ordenamiento jurídico*. In this case, *sistema legal* would not be incorrect, but the expected term is the group-one *ordenamiento*.

6. Some leading features of the morphology and syntax of legal English

For the translator, the second major source of difficulty in legal English is the peculiarity of its morphology and syntax. Our aim in this section is simply to draw attention to some of the most significant grammatical features of the type. In Chapter 8 we shall discuss the issue more fully and provide some pointers to the solution of particular translation problems.

(a) Unusually long sentences

One section of the British Drug Trafficking Act is a single highly complex sen-

tence of over 250 words in length. It is typical of the syntax of British statutes both in this and in the complexity of its layout, with multiple subordination and postponement of the main verb until very late in the sentence. Writers report similar findings after analysis of pleadings and private law documents like leases and contracts. By contrast, Continental law statutes tend to be made up of much shorter sentences with far fewer members and hence a more predictable syntactic development. European private law documents, however, are at least as complex as their British counterparts. For instance, notarized powers of attorney as produced by Spanish, French and Italian authors are notoriously boiler-plated and generally ill-punctuated, as are pleadings and other pre-trial documents drafted by lawyers in these languages. Translators of these texts must therefore choose between retaining the format (at the risk of incomprehensibility or added ambiguity) and undertaking vigorous breakdown of inconveniently long sentences into their component parts prior to translation. Whichever course is taken, target audience expectations should clearly be paramount for the translator.

(b) The anfractuosity of English legal syntax

Our example from the Drug Trafficking Act illustrates another leading feature of the morphology of legal English, namely the abundance of restrictive connectors. As we shall see more fully in Chapter 8, this density of subordination and parenthetic restriction is particularly frequent in the texts of laws and of contracts, and gives them their characteristic air of complexity (Bhatia 1993:116). For the moment, we shall simply point out that the following are among the commonest conjunctions and prepositional phrases of this type found in legal English: 'notwithstanding', 'under', 'subject to', 'having regard to', 'relating to', 'on', 'pursuant to', 'in order to', 'in accordance with', 'whereas', and many more.[3] Garner (1991) has this feature in mind when he remarks on the 'anfractuosity' of English legal style.

(c) Abundant use of the passive voice

This is a pet hate of proponents of 'Plain English' but need not trouble the translator. Though it is undoubtedly true that one common effect of the passive mood is to suppress the identity of the agent responsible for the performance of

[3] 'notwithstanding' *(pese a, no obstante, sin embargo de)*, 'under' *(a tenor de lo dispuesto en, conforme a, en virtud de, de conformidad con, de acuerdo con, al amparo de, según)*, 'subject to' *(salvo, sin perjuicio de)*, 'having regard to' *(visto, habida cuenta de, considerando)*, 'relating to' *(relativo a, en relación con, en lo que atañe a)*, 'on' *(respecto de, relativo a)*, 'pursuant to' *(en cumplimiento de, en virtud de, a tenor de lo dispuesto en)*, 'in order to' *(para, con el fin de, a fin de que)*, 'in accordance with' *(de acuerdo a/con, siguiendo instrucciones de, en virtud de, de conformidad con)*, 'whereas' *(considerando que)*.

the act, this is often exactly the point of the construction, e.g. when the import of the statement is universal ('No submissions [by any party] *will be accepted* after *the date stated*') or when the implied subject is too obvious to need stating ('Payment *must be made* within seven days' or 'The accused *was found guilty*'). Within target-language norms, it is usually easy to preserve the equivalent effect in translation, thus keeping the stress on the action, rule or decision rather than on the personality of the doer. Nevertheless, the Securities Exchange Commission (SEC) is one example of an official body that is sensitive to the appearance of obscurity that over-use of the passive can convey. A good example of how clarity of statement can be achieved by the switch from passive to active, and from impersonal to personal (second-person address directed at the reader) is provided by the following case of rewriting of one of the sentences in a prospectus:

> **(Old version):** No person has been authorized to give any information or make any representation other than those contained or incorporated by reference in this joint proxy statement/prospectus, and, if given or made, such information or representation must not be relied upon as having been authorized.
>
> **(New version):** You should rely only on the information contained in this document or that we have referred you to. We have not authorized anyone to provide you with information that is different.

(d) Conditionals and hypothetical formulations

In texts like statutes, contracts and handbooks containing procedural rules, many possible situations, factual scenarios and exceptions must be provided for. The result is that the language in which they are written, and legal language generally, is unusually rich in syntactic indicators of condition and hypothesis, which may be positive ('if', 'when', 'where', 'whenever', 'wherever', 'provided that', 'in the event that/of', 'assuming that', 'so long as', 'should' and many others) or negative ('unless', 'failing', 'should... not...', 'except as/where/if', 'but for', and so on). Translators should be especially vigilant to ensure that they deal adequately with complex conditions, which may include double or triple hypotheses and mix positive with negative possibilities, as in the following passage:

> *Where either party fails to perform* their side of the bargain, then, *subject to clause 15* above, *if notice of non-performance is given* in writing by the injured party within seven days, or, *in the event that communication is impossible* until the ship reaches a port of call, as soon thereafter as is practically possible, the injured party shall be entitled to treat the contract as discharged *except as otherwise provided* in this contract.

(e) The simple syntax of plain judicial narrative

We have seen that the syntax of statutes, contracts and pleadings can be extremely dense and complex. However, the opposite style of discourse is commonly found in the judicial summary of the particular facts of a case. Here, the chosen style is commonly plain to the point of baldness and the dominant structure is paratactic, in keeping with the aim of this part of the text, which is to lay out simply and clearly the issues on which the judgement depends.

Odd though it may seem, this forthright form of English writing may present difficulties for the translator, whose language may not tolerate the quickfire staccato of 'subject+verb+object', the dearth of connectors and the reiterative use of pronouns and deictics natural in everyday English. In other words, while complex sentences may need breaking down for translation, simple sentences may need building up (we shall deal more fully with this issue in Chapter 8). An instance of the problem is the following passage from the 'facts as found' section of a judgement. We have used italics for the subjects of each of the sentences, and the repeated references to 'the ship' and 'she', to draw attention to the possible need for translators to supply connectors and perhaps adjust the anaphoric and cataphoric layout of the original in their versions:

> HIS LORDSHIP said that *M-Vatan* was an ultra-large crude carrier 370 metres in length and 64 metres in beam. *She* was probably the largest *ship* ever salved. In July 1985 *she* was on charter to the National Iranian Tanker Co, engaged on a shuttle service between the oil loading terminal at Kharg Island and Sirri Island. On July 9 *she* was struck by a missile which caused a fire. *The ship* was almost fully laden with crude oil owned by the National Iranian Oil Co (NIOC). *The explosion* blew a large hole in the *ship*'s side. Burning oil flowed out of *the ship*. *The salvors' tug*, Salveritas, was at anchor about 48 miles from the casualty. *The services rendered* involved fire-fighting and 200 miles' towage to anchorage off Sirri Island.

(f) Active and passive parties in legal relationships: the suffixes -er (-or) and -ee

Most legal activity is concerned with the creation, exercise and extinction of rights and with disputes concerning those rights, and in most of these situations there are two parties. In criminal cases the two parties are the state (or the Crown, in British practice) and the accused, or the prosecution and the defence. In civil proceedings they are the plaintiff (or claimant) and the defendant, or the applicant (or petitioner) and the respondent, and on appeal they are the appellant and the respondent (or, less usually, the appellee). In proceedings the court

adjudicates between the rival claims of the two sides or adversaries. Hence the generic name of 'adversarial procedure' for this state of affairs, rather than the 'inquisitorial procedure' characteristic of the examining magistrate or 'investigating judge' (*juez de instrucción, juge d'instruction, Untersuchungsrichter*) found in Continental criminal law.

On the other hand, a feature of legal relationships created at the will of the parties is the use of the suffixes '-er' (or '-or') and '-ee' added to the appropriate verb to form the names, respectively, of the active and the passive parties. For example, the party who *grants* a right is the 'grantor' and the person who receives it is the 'grantee'. In contracts, where each party both gives and receives a promise, both parties are 'promisor' and 'promisee' vis-à-vis their opposite number. And the same holds true of verbs like 'lease' ('lessor'/'lessee') 'bail' ('bailor'/'bailee'), 'mortgage' ('mortgagor'/'mortgagee'), 'license' ('licensor'/'licensee'), 'assign' ('assignor' /'assignee') and 'draw' ('drawer'/'drawee').[4]

However, this is not an automatic feature of word-formation. For one thing, care sometimes has to be taken with the semantics of the active and passive senses. For instance, in the case of 'mortgage', the verb means 'to offer property as security for the repayment of a loan', so that the 'mortgagor' is the debtor and the 'mortgagee' the creditor, and not the other way round. Moreover, there are cases where one of the pair is in common use while its fellow is not: 'payee', for instance, is more often matched with 'drawee' than with 'payer'; the counterpart of 'debtor' is 'creditor' rather than 'debtee'; 'licensing body' and 'rightholder' are more common than 'licenser/licensor', and so on.

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[4] 'grantor' *(mandante)*, 'grantee' *(mandatario)*
'promisor' *(prometiente)*, 'promisee' *(receptor de una promesa)*
'lessor' *(arrendador)*, 'lessee' *(arrendatario)*
'bailor' *(depositante)*, 'bailee' *(depositario)*
'mortgagor' *(deudor hipotecario)*, 'mortgagee' *(acreedor hipotecario)*
'licensor' *(cedente, titular del derecho)*, 'licensee' *(cesionario, derechohabiente, titular de la licencia)*
'assignor' *(cedente)*, '*assignee' (cesionario, derechohabiente)*
'drawer' *(librador, girador)*, 'drawee' *(librado, girado)*.