



## Issues in Legal Translation

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*"(...) not every man is able to give a name, but only a maker of names; and this is the legislator, who of all skilled artisans in the world is the rarest (...)*

*But (...) the knowledge of things is not to be derived from names. No; they must be studied and investigated in themselves (...) and no man of sense will like to put himself or the education of his mind in the power of names; neither will he so far trust names or the givers of names as to be confident in any knowledge which condemns himself and other existences to an unhealthy state of unreality (...)"*

*Plato, Cratylus (Jowett translation)*

According to Plato, words are unreliable guides to the ideal (the goal of all knowledge) because one cannot know how good a job the lawgiver did in making them, and because they have subsequently been subject to change by "people who care nothing for the truth, but only for the shape of their mouths."<sup>1</sup>

Likewise, lawyers must often face a contrast between an ideal vision of "the law" and the reality of legal life, which is made up more by precedents subject to interpretation than by statutes carved in stone. These difficulties are compounded in the cross-border context due to the additional complexities of different languages as well as different legal systems.

In solving international legal problems, a lawyer will be dealing with words, and the accuracy of a written legal document depends largely on word selection, syntax and good sentence structure. According to A. Samuel Adelo, "the lawyer must then depend on a translator to render the words he uses in a legal document into another language." Conversely, a lawyer in international practice will often require the services of a translator to render foreign documents (usually drafted by an attorney subject to equally demanding requirements relating to word selection, syntax and sentence structure) into the lawyer's native language. Unfortunately, lawyers often underrate the importance of selecting a good translator to accomplish these important tasks.

Legal translation is often more difficult than other types of technical translation because of the system-bound nature of legal terminology. Unlike scientific or other technical terminology, each country has its own legal terminology (based on the particular legal *system* of that country), which will often be quite different even from the legal terminology of another country with the same language.

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<sup>1</sup> Joseph, John E., *Indeterminacy, Translation and the Law*, in Translation and the Law, American Translators Association Scholarly Monograph Series.



In "Culture Clash: Anglo-American Case Law and German Civil Law in Translation," Sylvia A. Smith explains that the system-bound nature of legal text means that successful translation into another language requires competency in at least three separate areas: first, a basic knowledge of the legal systems, both of the source and target languages; second, familiarity with the relevant terminology; and third, competency in the specific legal writing style of the target language. Without these competencies, the translator's rendition will be a word-for-word translation that is often incomprehensible.

Thus, the professional legal translator must be part linguist, part legal scholar and part detective, willing and able to search out and define legal concepts expressed in the source language of a document that may not even have an equivalent in the language or legal system of the target text. The translator must first *decode* the source text and reconstruct its meaning in the target text. In many cases, the translator is limited to finding a functional equivalent for a word or phrase or a parenthetical explanation because an exact translation is impossible.

A good legal translator also knows that even within the legal field there are completely separate areas of law that require specific translation techniques: a contractual document has little in common with a will, an administrative certificate, a judicial decision or a statute, to name a few examples. The translator knows that he or she must consult not only a monolingual legal dictionary, but also a treatise regarding the subject matter, and that bilingual dictionaries, while useful, should be used with caution.

The professional legal translator must understand the intended use of the translation, which has as much bearing on his or her approach as the text of the document itself. Terminology, phraseology, syntax, register (tone) and a myriad of other parameters will be affected by the purpose of the translation (e.g., is the translation for information purposes only, binding contract language, or for submission as evidence in court?). As source-text documents are not always well written or clear, the translator must first decide, in the words of author Holly Mikkelson, whether the source text is "unintelligible to the laymen but not the expert, or simply unintelligible." In this case, the translator would have to decide whether a faithful translation of the meaningless original should be equally meaningless in the target language, despite the pain of deliberately creating nonsensical text.

When faced with international disputes involving different languages and legal systems, legal counsel and their clients would be well advised to obtain the services of translators able to successfully bridge the divide of legal systems, as well as language and culture, in order to provide *literate* rather than *literal* translations.



Finally, attorneys involved in international litigation should be aware of a recent UK case involving the translations of a party's own non-privileged documents. In *Sumitomo Corporation v Credit Lyonnais Rouse Ltd*, the Court of Appeals held that in the context of legal professional privilege, there was no relevant distinction between a translation of an unprivileged document controlled by the party claiming privilege and a copy of such document. Because the translations were not original documents, privilege would only apply under certain limited circumstances. As a result of this decision, opposing parties will be entitled in most cases to copies of translations from the other party upon payment of the copying fee, without sharing in what can be substantial translation costs.

*Steve Kahaner is the Executive Director of Juriscribe and a licensed attorney with over 10 years of practice experience. He is a member of several bar associations, and has served as director of a number of non-profit associations, including The Association of Language Companies, for which he currently serves as Vice President. In the academic realm, Kahaner has been a Subject Matter Expert for NYU's Center for Foreign Languages and Translation, teaching Spanish-to-English Legal Translation. He is also a fan of motorcycling, scuba diving and skydiving, but hasn't had the time to engage in any of those activities for quite a while.*