
**Investigating and Translating Formality in English Legal Texts
into Arabic**

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Abstract

Legal language is an unusual type of language which raises the interest of many people. It is considered to be one of the discourses that prefer traditional styles and values. Moreover, using this language is confined to specific places and circumstances, namely, in a court or legal texts. Additionally, legal language is radically different from ordinary language in vocabulary, morphology, syntax, and semantics, in addition to other distinctive features. In fact, one of the predominant distinctive features of legal language is that it is a formal language. It is hypothesized that formality in English legal language is realized with different ways and at different levels. It is also hypothesized that what is formal in English is not necessarily formal in Arabic. In other words, formal expressions in English and Arabic are realized differently.

The data in this study has been quoted from different authentic legal texts supplemented by the researcher's renderings.

Key words: formality, legal language, translation of formality

1.1 The Nature of English Legal Language

Since this paper is concerned with the legal language, it is appropriate to define “*Law*” i.e. the entity that is constructed and formulated by legal language, as a first step. In Henry Black's Law Dictionary (1979: 700), the word “*Law*” has four entries: the first, the term *The Law* means “[*The maxim that*] is laid down, or-dained, or established. A rule or method according to which phenomena or actions co-exist or follow each other”. Second, *The Law* is defined as:

A system of principles and rules of human conduct...which are either prescribed or recognized by the governing power in an organized jural society as its will in relation to the conduct of the members of such society, and which it undertakes to maintain and sanction and to use as the criteria of the actions of such members.

(BLD, 1979: 700)

Third, *The Law* is “a solemn expression of legislative will. It orders and permits and forbids. It announces rewards and punishments. Its provisions generally relate not to solitary or singular cases, but to what passes in the ordinary course of affairs”. (BLD, 1979: 700).

The origin of the word “*Law*”, according to Melinkoff (1963: 34), is Scandinavian and it came into old English about 1000 A.D. from prehistoric Old Norse. Consecutively, it was derived from an Old Icelandic word that means “*something laid or fixed*”.

Tiersma (1999: 16) holds that the spread of Christianity in 597 A.D. was an important event for the English language and law in England since it led to the use of Latin in legal writings. Thus, Latin for the second time had a dominant presence in England by means of the Roman Catholic Church. Its influence extended to the legal sphere by means of the Canon Law, in particular, through which the Church regulated different matters such as marriage and family. The use of Latin as a legal language introduced terms like “*alibi*”, “*bona fide*”, “*client*” and “*mediate*” Tiersma (1999: 20–23) also indicates that from 1310 A.D., French has become the language of statutes. Therefore, the languages of Norman French and Latin were used together at that time in the legal sphere.

As corollary, several French words and terms such as “*attorney general*” and “*Force majeure*” are [still] used in the legal language of English. All this dominance came to an end in 1731 when the English Parliament permanently ended the use of Latin and French in legal proceedings (ibid: 36). Yet, it became a strenuous work to render several French and Latin words and terms into English. Thus, another statute was legislated. To facilitate the exhausting task of translation, the statute stipulates that the traditional names of writs and technical terms and words will continue in their original language (ibid).

1.2 Characteristics of Legal English

The language of the law is regarded as the customary language that is used by solicitors in the Common Law jurisdictions where the English language is the official language (Melinkoff, 1963: 11). Summing up the distinctive characteristics of legal English, Melinkoff says that there are nine features of legal English (ibid):

1. The use of common words and terms with uncommon meanings.
2. the frequent use of formal words.
3. Frequent use of the words and phrases of Latin.
4. Frequent use of Old English.
5. Frequent use of old French and Anglo-Norman words.
6. Use of argot.
7. Use of terms of art.
8. The deliberate use of words and expressions with flexible meanings.

9. Attempting extreme precision of expression.

Tiersma (1999) explains that the legal language kept its invariable status though the English colonizers conveyed legal English via the British Empire, including North America (ibid: 40). In spite of antipathy towards the English and lawyers, the Americans preserved the legal language of English. The Articles of Confederation were linguistically very convoluted and full of legal jargon (ibid).

On the other hand, Mattila (2006: 3) holds that the English legal language does not qualify as a language in the same way as French, Finnish, or Arabic but it operates as a functional variant of natural language with its own linguistic norms. According to Maley (1987:13), language is medium, process, and product in different aspects of the law where spoken and written legal texts are produced in the service of organizing social behavior.

Tiersma (1999) presumes that the development of legal language has come naturally due to the influence of different languages and cultures, the increasing complexity of the legal systems, and the shift from oral to (mostly) written communication. Nonetheless, when observing any form of language, one can clearly identify the ones of a legal nature. No one can deny that there is a clear distinction between the language of everyday usage and the language of the law. Bouharaoui (2008:9) points out that the fact that everyday conversation, which is believed to be the most fundamental form of language by many linguists, is often contextualized, referring to participants and actions around the speakers. On the other hand, the language of legal documents is mostly decontextualized and attempts to encompass linguistically general classes of events and participants through various means (ibid). Legal language plays a key role in the construction, construing, and execution of legal conduct.

Bouharaoui also states that legal language is full of technical jargon, and most of this jargon is incomprehensible to ordinary people or the nonprofessionals who may not know the legal concepts behind it or to what it refers (ibid). It is doubtless that any of those ordinary people knows that an expression such as “*Contraband*” means “*any property that it is illegal to produce or possess; smuggled goods that are imported into or exported from a country in violation of its laws*” or that “*Redemption Price*” refers to “*the price of a bond that has not reached maturity, purchased at the issuer's option; the price of shares when a mutual-fund shareholder sells shares back to the fund*” (BLD, 1979: 1308). These expressions evidently belong to legal terminology.

The legal concepts need appropriate terms to express them. Any legal system is based upon legal concepts, and words are essential to articulate them. The same conception can apply to different fields e.g.

medicine, engineering or archeology, where one can find certain words or specialized terms expressing each field's underlying perceptions and concepts. Thus, legal language is a language for special purposes. Mattila points out that legal language is often characterized as a technical language or "*technolect*" which means that it is a language used by a specialized or qualified person (Mattila, 2006: 3).

Combining these legal concepts, which are expressed by legal language, results in what is known as the legal system.

Such a holistic organization needs several bodies, institutions, committees, etc to incorporate the legal concepts in an applicable form that can be established, maintained or changed (when necessary). These forms may range from simple decisions, recommendations, or local directives to presidential decrees, governmental agreements, or even international treaties. Those forms (written or spoken) must be arranged structured in a linguistic framework.

Furthermore, Bhatia (1987: 227) holds that three main types of legal writing can be recognized, namely; academic legal writing, judicial writing and legislative writing.

These types include the following (ibid):

1. Memos, petitions and legal proceedings.
2. Legislation, constitutions and various regulations.
3. Academic writings and textbooks.
4. Contracts, agreements, and wills.

Throughout the years, the English legal language has developed. This development comes as a result of the increasing need to use "*essential information in a way that gives a co-operative, motivated person a good chance of understanding the document at first reading, and in the same sense that the writer meant it to be understood..[by applying] appropriate structure and layout to help them navigate through the document*" (Cutts 1995: 3). What is known as 'Plain English Movement' is one of its developments (Tiersma, 1999: 220). Nowadays, it is used in different countries such as the United States of America, the United Kingdom and Sweden in legal writings instead of the old-fashioned legal jargon to make legal language less complicated and more accessible to ordinary persons (ibid: 211-227).

1.3. Ways of Achieving Formality in English Legal Language

Formal legal language in English overweighs legal texts and this formality is presented at different levels. In what follows, ways of achieving formality in English legal language will be tackled in some detail.

1.3.1 Ways of achieving Formality at the Lexical Level

1.3.1.1 Latin and French Terms

One of the most important characteristics of the legal language is the use of Latin terms and words. Alcaraz and Brian (2002:5) state that there are several reasons behind the use of Latin terms in the legal language of English. They (ibid) add that it was not evitable for the English law to prevent the influence of Latin that was enhanced by two powers at that time: the first power is the power of the Roman Church and its wide use in Europe as a language of learning and literature. the second one is the great power of the Roman code that was a basic system and had power of an institution over a large area in Europe. For example:

Bona fide (good faith or in good faith)

Actus reus (guilty act)

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

On the other hand, the use of French items and words in the legal language of English is very clear. After the period of the Norman Conquest in 1066; the language of the invaders got an important rank in the legal law of England which brought a large number French terms in the legal language, as in the following terms and words:

proposal, terms, conditions, schedule, policy, alias, contract, quash and others.

The following examples will suffice in this respect:

1 Premise: the space on the ----- floor of the building, *designated* as ----- and located substantially as shown in the floor plan attached hereto as Exhibit "A".

العقار: المساحة في الدور ----- من المبنى المسمى ----- و الكائن كما هو موضح من الناحية الجوهرية في المسقط الافقي للطابق المرفق بهذا العقد (ملحق أ)

In the example above, the verb *designate* is one of the formal verbs which, according to Oxford Advance Learners' Dictionary, OALD, means to say officially that sb/sth has a particular character or name. Thus, this verb, which is from a French origin, shows formality.

2. Seller represents and warrants to the buyer for the purpose of inducing buyer to *consummate* the sale and purchase of the property.

يقر و يتعهد البائع للمشتري بغرض تشجيعه على اتمام بيع و شراء العقار.

Here, the verb *consummate*, according to OALD, means to make sth complete or perfect, is a formal verb.

3 The Premises are leased for the lease term, which, subject to Article 4, shall *commence* on the Scheduled Commencement Date and shall expire on the Expiration Date, unless sooner *terminated pursuant* to the provisions of this Lease.

يؤجر العقار لمدة الايجار التي تبدأ مع عدم الاخلال بالمادة ٤ في تأريخ الانتهاء ما لم ينته قبل ذلك بموجب أحكام هذا العقد.

In the abovementioned example, the verbs *commence* and *terminate*, which are from a French origin, are formal verbs used in the legal language. The adjective *pursuant to* in the same example is more formal than the adjective *according to*.

4 Both parties hereto expressly declare that their addresses are their legal selected *domiciles*.....

يقر الطرفان صراحة بان عنوانيهم هي مساكنهم القانونية المختارة

Here in the example above, the noun *domicile* is formal. According to OALD, *domicile* means the place where sb lives, especially when it is stated for official or legal purposes.

With regards to the translations of the formal words above into Arabic, namely, *designate*, *consummate*, *commence*, *pursuant to* and *domiciles*, they have been translated into Arabic as words used in both formal and informal texts. In other words, the formal words in the English legal texts are not necessarily translated into formal words in Arabic since each language has its own legal system. Thus, formality is English and Arabic are realized differently.

1.3.1.2 Archaisms

Archaic words are ancient terms and words that have an antiquity of style or use and the survival of something from the past. Archaic terms and words are widely used in the legal language of English. Furthermore, this flavor of archaism is used for some reasons. Tiersma (1999:95) says that the legal language of English often strives toward the wide use of formality. This formality gravitates towards the archaic language. Many solicitors prefer to use archaic terms and words rather than new ones. For example, they may use the word 'imbibe' rather than the word 'drink', 'inquire' as an alternative for the word 'ask', 'peruse' rather than 'read'. Likewise, the use of the verb '*witnesseth*' and not 'witness' is preferred by many lawyers and those who are concerned with the legal language of English.

There is another kind of archaisms with the use of compound words that is composed of an adverbial place and a preposition. This kind of archaic words is supported in order to give the exact reference, particularly to the document and contracts. The following terms and words will suffice in this respect:

'*hereto*', '*hereon*', '*hereunder*', '*herein*', '*hereunto*', '*hereinbefore*', '*hereinafter*', '*thereof*', '*thereafter*', '*whereof*'.

Although these old terms form an integral part of the language of the law, they are not as commonly used as before and they are more common in one legal text type than another. For instance, they are rare in the modern language of legislation and in international law documents such as those of the United Nations. Yet, they are used in

private documents such as contracts, agreements and certificates. In fact, they are considered the 'daily bread' of the lawyers (Mellinkoff, 1963:13).

The following legal examples will illustrate how legal language makes use of archaic terms as a means of expressing formality:

The Contractor shall be deemed to have inspected the Work Site and the surroundings *thereof* and to have read all available information in connection *therewith*.

يعد المقاول قد عاين موقع العمل و البيئة المحيطة به و اطلع على كل المعلومات المتاحة المتعلقة بذلك.

In the example above, the two adverbs *thereof* and *therewith* give the flavor of formality to the legal text.

2. Words and phrases *herein* contained shall be constructed as in the singular or plural, and as masculine, feminine or neuter gender, according to the context.

تفسر الكلمات و العبارات الواردة في هذا العقد في صيغة المفرد كما في الجمع و في صيغة المذكر كما في المؤنث أو المحايد حسبما يقتضي السياق.

3. Labor contract has been entered in clear language leaving no doubts or controversy regarding rights and duties contained *therein*.

حرر عقد العمل بلغة واضحة لا تدع اي مجال للشك او الجدل بشأن الحقوق و الواجبات الواردة فيه.

The archaic adverbs *hereby* and *therein* in the above examples are formal words.

With regards to the translation of the legal texts, as far as formality is concerned, it can be noted that formal elements in English legal texts do not necessarily express formality when they are rendered into Arabic since each language has its own features and characteristics with regard to the legal language since they represent two different legal systems.

1.3.2 Ways of Achieving Formality at the Syntactic Level

1.3.2.1 Passivization

Passive voice is widely used in legal language as a result of its useful indirectness and formality (Butt, 2006:153-154). Legal writers tend to use passive voice when they want to conceal the agent of the action and when the legal text can be applied to more than one possible agent (Tiersma, 1999:74-77). Furthermore, the use of active voice in legal texts is easier than that of passive voice. Therefore, passive vice must be avoided unless it is absolutely necessary. In this respect, Garner (2002:40-42) holds that: "*changing a passive voice to active saves words and makes reading easier*". The following examples include passive constructions:

1. The Employer shall be responsible for all bank charges for bonds and guarantees due to Iraqi banks. All such charges to foreign banks *shall be paid by the contractor*.

يكون رب العمل مسؤولاً عن الاجور المصرفية الخاصة بالتعهدات و الكفالات المستحقة للمصارف العراقية. و يدفع المقاول جميع هذه الاجور المستحقة للمصارف الاجنبية.

Here in the example above, the passive voice is agentive, i.e., the agent is existent in the sentence, which is preferred by the legal draftsmen and lawyers since it is indirect and formal.

2. The leased estate *has been taken over by the Lessee* free of all defects, with intact doors, windows, glass, locks and their keys, lavatories, taps and sanitary tools.

استلم المستأجر المأجور سالماً من كل عيب تام للأبواب و الشبابيك و الزجاج و الأقفال بمفاتيحها و المغاسل و الحنفيات و الأدوات الصحية.

The passive voice in the example above is also agentive, which shows indirectness and formality in legal language.

As for the translation, the passive voice in the two examples above, has been rendered into active voice in Arabic since the agent is existent and the Arabic language prefers the use of active voice to passive voice when the agent is mentioned in the sentence.

1.3.2.2 Modality

Since legal texts have rights and duties that must be acquired and fulfilled, legal writers widely use modality to achieve this goal. Goodrich (1987:181) holds that modality is "a key feature of the legal text and as has been recognized, the prevalent discourse due to the performative nature of legal documents".

In fact, the modal *shall* is a formulaic predominant modal in legal texts. It dates back to the English translations of Roman laws texts. For example, *Monga Carta* was described as "an exercise in *shall*" (Sarcevic,1997:138)

In general English, the modal *shall* denotes future whereas in legal English, it is used as a means of 'totem', to conjure up some flavor of the law (Bowers, 1989:294). It functions differently in legal contexts as Triebel (2009:154) comments: " in legal document *shall* is not used to express future time but to express obligation". Crystal and Davy (1969:99) identify the general meaning of '*shall*' as that of obligation. On the other hand, Coates (1983:89) demonstrates that the obligatory sense of *shall* "is restricted to formal legal context". In this statement, Coates maintains that *shall* is frequently used in legal language to express obligation in a formal way. The following examples will illustrate the use of *shall* in legal language to express obligation and formality:

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

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

Here, obligation is expressed by the use of modal *shall* and it is restricted to a formal legal context as well. As for the translation, *shall be brought* is translated into the present simple in Arabic تقدم which also expresses obligation. Furthermore, according to Sabra (1995:31), any verb in a legal text which is preceded by the modal *shall* is rendered into the present simple in Arabic.

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

على المؤجر تسليم المأجور مع المفاتيح و الأقفال و الاثاث و التركيبات و أية تأسيسات اخرى في حالة عمل جيدة و مرضية. و قد اعد كشف محتويات المأجور مما يعد جزءا متما من هذا العقد.

In the example above, the modal *shall* does not express futurity but it rather indicates obligation in a formal way. Formality also shows seriousness in this regard.

1.3.2.3 Long Sentences

English legal language is known for its long and complex sentences. An English legal sentence is twice as long as the scientific English sentence (Danet, 1985:281)

An English legal text often consists of a number of long sentences. According to August (2002:45), long sentences are widely used in legal texts since they can express complex thoughts in a precise way since they might have several modifiers. The long sentences of legal texts usually have complex sentences of many kinds.

In fact, formality can take the form of long sentences in English legal language, as in the following long legal sentence:

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

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

In the example above, the long legal sentence shows the complexity of legal sentences because it consists of the main clause and more than one subordinate clause. This complexity is aimed at making the legal sentence show formality.

1.3.2.4 Some Terms Showing Formality

The formality of the English legal language stems from the use of some Latin terms that are more formal than Germanic-root words (Alcaraz, 2009:185). Formality is also reflected in the special nature of legal English expressed by fixed linguistic aspects: modals as is the case of the use of the modal *shall*, and enactment formulas, certain utterances in marriage ceremonies, formal expressions used in different contexts such as *your honor*, *your majesty* (in courts), *royal* (in a decree by the Queen), *master* (of a Minor in a report to the court). Oaths and swearing include highly formal expressions. For instance, a witness in a court utters this statement: "I do solemnly swear to tell the truth, the whole truth and nothing but the truth."

Conclusions

The present study has come up with a set of conclusions. Legal texts in English deploy several formal elements to the extent that ordinary persons find difficulties in understanding them. Formality in English legal texts can be realized in several linguistic ways, including lexical and syntactic. This validates the first hypothesis, namely; formality in English is realized in different ways and at different levels. Furthermore, what is formal in English legal texts is not necessarily formal in Arabic as has been shown in the translations of the English legal texts that have been tackled in this study. This has validated the second hypothesis. The features of legal language mentioned previously give evidence to the high level of difficulty and specificity of translating legal texts from English into Arabic and vice versa. Legal systems of source and target language differ because they reflect their culture and institutional traditions, making translation between the two languages even more difficult. Therefore, formality in English and Arabic is realized differently since each language has its own legal system.

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استقصاء اللغة الرسمية في النصوص القانونية
الإنجليزية وترجمتها الى اللغة العربية

اللغة القانونية هي نوع غير عادي من اللغة يثير اهتمام الكثير من الناس. وتعد اللغة القانونية من الخطابات التي تفضل الأساليب والقيم التقليدية. علاوة على ذلك، يقتصر استخدام هذه اللغة على أماكن وظروف محددة، أي في المحكمة أوفي النصوص القانونية. بالإضافة إلى ذلك، تختلف اللغة القانونية اختلافاً جذرياً عن اللغة العادية في المفردات والتصريف وبناء الجملة وعلم الدلالة، ناهيك عن السمات المميزة الأخرى. في الواقع، إحدى السمات المميزة السائدة للغة القانونية هي أنها لغة رسمية. يفترض أن يتم تحقيق اللغة الرسمية في اللغة القانونية الإنجليزية بطرق مختلفة وعلى مستويات مختلفة. ويفترض أيضاً أن ما هو رسمي في اللغة الإنجليزية ليس بالضرورة رسمياً في اللغة العربية. وبعبارة أخرى، يتم تحقيق التعابير الرسمية في اللغة الإنجليزية والعربية بطرق مختلفة. تم اقتباس البيانات الواردة في هذه الدراسة من نصوص قانونية موثوقة مختلفة تكملها ترجمات الباحث.

الكلمات المفتاحية: اللغة الرسمية، اللغة القانونية، ترجمة اللغة الرسمية