

Terminology Translation in Teaching Legal English



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Abstract

The article aims to highlight the most challenging aspect of teaching legal English as it is seen by a non-native teacher who is not an expert in law. The development of basic communicative skills needed in some particular professional situations depends to a great extent on students' ability to translate legal terms. The role of the teacher is to help students cope with difficulties caused by system-bound nature of legal terminology, which means spending time and effort on mastering the subject content.

What is so specific about teaching legal English?

As a non-native teacher of legal English who is not fortunate enough to be an expert in law I must admit that the most time-consuming part of my preparation for classes is terminology mining. I always bear in mind two quite opposite views

of the balance between content and language in ESP teaching. Some consider the assumption that language input and subject content are separable to be erroneous (Bell 1999). Others argue that “as English teachers, we are experts in language use and we have to emphasize this language in our classes” (González 2009). Proponents of the latter view recommend ESP instructors to learn from their students, to exploit queries about subject content so as to provide opportunities for the students to develop their fluency, produce extended spoken discourse, and effectively share their knowledge of the subject. My strong belief is that this strategy is not as freely applicable in teaching English for Law as in teaching English for Sciences, Medicine or Psychology, for example. There are a few reasons for this.

First of all, using authentic teaching materials we inevitably expose students mostly to the UK or US common law legal systems, in which they are unlikely to have expertise. Due to this fact it is law, but not language, that students often ask questions about. Not to get in an awkward situation and to win over students’ trust teachers should predict probable critical incidents and prevent them by looking up the meanings of terms and learning necessary information on legal issues in advance.

At the same time we understand that our students are not particularly interested in UK or US law. “As English is increasingly becoming the international language of business, legal English is rapidly losing its ties with English-speaking countries. The most likely scenario is that your students need legal English to explain aspects of their own legal systems (which they already know about) to international clients (who may well be non-native English speakers)” (Day 2006: 9). That is why the focus of teaching legal English should be on relating country-specific authentic materials to students’ own jurisdiction. Thus, activities aimed at describing their own legal system as well as comparing and contrasting it to those of the UK or US should be used as frequently as possible.

Do we really have to translate legal terms?

However, as a linguist, the teacher must be fully aware of rather a serious problem that such activities will most probably cause. When we ask students to describe in English their own legal system, we, to a certain extent, force them to translate into foreign language. Even if their general English is fluent and accurate enough to let them think freely in this language about universal, commonly-known things it is very difficult for them to think in English about their country's law. This is quite natural, because when thinking about it they cannot do without *terms* which Sager (1998: 261) defines as depositories of knowledge and units with specific reference in that they "refer to discrete conceptual entities, properties, activities or relations which constitute the knowledge space of a particular subject field". Thus, to be able to speak in English about something relating to their national legal system, students, first of all, must translate the term from their mother tongue into English. This task may be quite a challenge even for a professional translator, to say nothing of students. Therefore the teacher should be ready to answer students' questions concerning terminology translation. At this point critical incidents may occur.

As an example I will describe one such incident from my teaching experience. I was working with a group of Ukrainian second-year law students at the topic "Company Law: company formation and management". After the students read and listened to authentic texts taken from the "International Legal English" course (Krois-Linder 2007) and did various exercises to learn the key terms and essential information on business entities in the UK and US, they were supposed to give an informal presentation of a type of company in their jurisdiction. It was a kind of a role-play, because the task was to talk to their imaginary client. According to the instructions given in the coursebook, students were supposed to use Ukrainian terms, for example, "командитне товариство", for identifying the type of legal entity they were going to talk about. However, they were curious enough to ask me how Ukrainian terms can be translated into English. Since they had at their disposal a list of terms from the texts they had

studied before, they, first of all, tried to choose the closest equivalents from that list but felt uncertain about their choices when it was necessary to indicate the distinction between the types of Ukrainian legal entities that do not have identical counterparts neither in UK nor US jurisdictions. Some of the students also doubted whether to translate the names of documents required for company formation and institutions with which the documents must be filed. They asked, for example, “Is there an established English equivalent of Ukrainian *Статут* (company constitution)?” or “Would it be correct to translate *Державна комісія з фондового ринку та цінних паперів* as Companies House?” It was obvious that the preceding language input was not sufficient for the students to prepare the presentation properly, so additional research was needed. It was not only the students who had to investigate possible ways of translating legal terms but the teacher (that is me) as well.

At this point one might doubt whether translation strategies are worth attention in legal English teaching. Indeed, in the National curriculum translation is not considered to be a significant component of the lawyer’s communicative competence. However, needs analysis clearly indicates that the skill of translating L1 terms into English is indispensable in law practice involving communication, particularly written one, with foreign clients. If a lawyer giving legal advice to a foreigner overuses Ukrainian terms it might lead to a communicative failure and make a negative impression on the client.

Why does legal terminology translation require so much cognitive effort?

Once the teacher decides to help students learn how to translate legal terms he/she must clearly understand why translation of legal terminology requires so much cognitive effort and can hardly be reduced to looking up the equivalents in bilingual legal dictionaries.

The specific nature of legal terms is best explained by cognitive linguists investigating how complex knowledge structures are organized and how meaning emerges from them.

The cognitive approach adopts Haiman's encyclopaedic semantics which does not make a distinction between linguistic and extralinguistic knowledge (Langacker 1997: 234). Therefore, meaning resembles an encyclopaedia rather than a dictionary and is not perceived as a bundle of features but as a dynamic mental process which emerges during discourse processing. "A lexical item," argues Langacker (2000: 4), "is not thought of as incorporating a fixed, limited, and uniquely linguistic semantic representation, but rather as providing access to indefinitely many conceptions and conceptual systems, which it evokes in a flexible, open-ended, context-dependent manner." Accordingly, legal terms may be regarded as points of access to concepts and prompts for conceptual operations that activate relevant background knowledge (Biel 2009). To understand what a legal concept means we have to refer to other cognitive domains which are presupposed by and incorporated in such a concept. For example, to understand the meaning of a Rights Issue we have to evoke the domain of company, shareholders, authorized capital, preemption rights etc. Besides, concepts are interrelated and embedded in various structured cultural models, cognitive models and frames which are to a certain extent reflected in national legislation and case law. Let us compare Ukrainian Cratyty, which evokes a model of a unified company constitution versus UK Articles of Association that refers to a model of a company constitution consisting of two documents: Memorandum of Association and Articles of Association, where the former sets forth the objects of the company and the details of its authorized capital, while the latter contains provisions for the internal management of the company. Furthermore, legal concepts are built around causal scripts. Kjør (2000: 146) argues that legal reasoning is based on the if-then mental model where a legal term connects legal conditions with effects and functions as "a reduced representation of legal rules". In other words, "a legal concept is an abstract general notion or idea which serves as a category of legal thought or

classification, the title given to a set of facts and circumstances which satisfies certain legal requirements and has certain legal consequences..." (Walker 2001: 93). It is obvious that sets of facts and sets of consequences will rarely be exactly the same in two legal systems. Therefore, concepts belonging to different legal systems are hardly ever identical. This is not the case with subject fields like medicine, for example, where concepts are universal and terms referring to them are completely equivalent in different languages. As for legal terms, their system-bound nature does not allow to regard equivalence as a relationship of identity. Rather, it should be regarded as a relationship of similarity (Tymoczko 2005: 1092) or "the optimum degree of approximation" (Alexieva 1993: 103). Thus, evaluation of the degree of equivalence is the main factor determining the choice of translation strategy.

What translation strategy to choose?

Basically, translation strategies can be classified into two main types. One is foreignising (Source Language (SL)-oriented equivalents), which seeks to evoke a sense of the foreign. The other is domesticating (Target Language (TL)-oriented equivalents) which is aimed at facilitating comprehension through assimilation to the TL culture (Venuti 1998). Though in legal translation domesticating is considered to be a preferred strategy, scholars are not unanimous in their opinions as to its acceptability in translation of particular legal terms. Unlike Weston (1991: 23) who speaks in favor of TL-oriented equivalence and finds it "the ideal method of translation", Rayar (1988: 542) claims it would refer the recipient to the wrong legal system, which "would inevitably lead to confusion of the reader. This reader, accustomed to a different system, will automatically approach the text from his own frame of reference." Here the question of recipients and the target system must be raised. When one has to translate the term from English into a language with one standard variety such as Ukrainian the task may cause some problems but not as serious as those that, for example, Ukrainian lawyers are likely to face in situations when they counsel an English-speaking client on Ukrainian legislation.

To convey the meanings of Ukrainian concepts in English in the most effective way it is necessary to give the client access to the unfamiliar through the familiar, that is, unless the degree of incongruity is too large, to use “a term designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system” (Šarcevic 1997: 236). Thus, when looking for a TL-oriented equivalent, one might have to take into account what the target system is. Is it the US, Canada, Australia or the UK, with England and Scotland having distinct legal systems? Or is the translation intended for an audience for which English is not a native language but is a lingua franca? Sometimes it may be important to use the established English equivalent, i.e. the one used in official translations of Ukrainian laws. Adoption of this or that English term as an established equivalent of a Ukrainian term is a matter of convention in the speech community, therefore in certain cases to use an established equivalent is a must for a lawyer as it may be a mark of competence and professionalism. For example, such type of the Ukrainian business entities as «публічне акціонерне товариство», denoting an entity whose shares may be purchased by the public and traded freely on the open market, is in many aspects similar to UK “public limited company” and US “C corporation”. However the established equivalent of the term used in official translations is “public joint stock company”.

The above said in no way implies that the teacher must offer students all possible English variants of equivalents. What is really needed is to make students aware of existing translation strategies and teach them how to choose the most suitable one in a particular situation.

Conclusion

In teaching legal English, as the analysis of the learner’s needs indicates, efficient development of basic communicative skills is harnessed to the skill of terminology translation. A system-bound nature of legal terms accounts for considerable cognitive effort and significant amounts of time spent by the teacher, especially when he/she is neither a native speaker nor an expert in law, on

preparation for activities aimed at describing students' own legal system as well as comparing and contrasting it to those of the UK or US.

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