# A Linguistic Analysis of Some Problems of Arabic-English Translation of Legal Texts, with Special Reference to Contracts

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**Part II**

# INTRODUCTION

There is an inseparable relationship between language and law. In any society, rules of law are written rules. Law and language are closely related. Law needs language. Law may even be influenced by language. Lawyers are like any other users of language. Legal translation from one language to another cannot be performed without regard to the cultural differences between the two legal systems. The areas, in which issues arising from the drafting of legal language have attracted most attention to date, are the fields of legal translation.

By means of written language, constitutions come into existence, laws and statutes are enacted, and contractual agreements between contracting parties take effect. The legal implications of language continue to extend far beyond the courtroom – to interactions between police and suspects, to conversations between lawyers and their clients, to law enforcement's use of surreptitious recordings, and to such unlawful speech acts as offering a bribe, or issuing a threat, or making a defamatory statement. A little reflection suffices to reveal just how essential language is to the legal enterprise.

The approaches to legal translation have been mostly oriented towards the preservation of the letter rather than effective rendering in the target language, legal texts having always been accorded the status of "sensitive" texts and treated as such. A challenge to the unquestioned application of a "strictly literal" approach to legal translation came only in the nineteenth and early twentieth centuries (Sarcevic, 2000, p. 24).

This book aims to provide a relatively comprehensive description of legal language in general and an application was done to the main features of the language of contracts and how each translator approached problematic areas of legal translation in the two contracts.

# PART 1

# CHAPTER ONE

# INTRODUCTION: THEORETICAL PRELIMINARIES

There has been growing attention paid to the interdisciplinary study of the language of law. This book explores the nature and features of this relatively new discipline, including its relationship to relevant areas such as law and linguistics, in addition to exploring the characteristics of legal English and Arabic within their legal contexts and the difficulties and problems of translation. Although the study of language and law has been advancing, it nonetheless remains a relatively marginal field.

There is an inseparable relationship between language and law. In any society, rules of law are written rules. Lawyers are like any other users of language. Accuracy of wording is a desirable and important attribute for a good lawyer. On the other hand, lawyers sometimes attract both distrust and derision for their supposed abuses of ordinary language, such as the deployment of archaic terms, over-elaborate syntax and high-sounding expressions. The areas in which problematic issues arise from the drafting of legal language are the field of legal translation.

Legal translation is considered by many writers to be extremely challenging. Particular challenges are posed by the specificity of legal language and, in particular, the system-bound nature of legal terminology and differences between the common law and civil law systems. Weston adds that "the basic translation difficulty of overcoming conceptual differences between languages becomes particularly acute due to cultural and more specifically institutional reasons" (1983, p. 207).

Legal language has a problem inherent in language, due to both its flexibility and vagueness or due to detecting a link with the mentality of lawyers who are always keen to identify an unintended ambiguity in words or a loophole in documentation.

Legal translators are obligated to not only speak the target and the source languages fluently, they must be closely familiar with the law and the legal system in the country where the translated text originated, and the country for which the translation is being prepared. Legal translation requires usage of methodology according to the challenges it poses;

challenges that are different from the ones connected to other types of specialized translation.

> 'Specialized translation can be divided into two categories: technical and institutional translation. Technical translation is non-cultural and therefore universal; therefore the terminology is not culture dependent; it is mostly known internationally. Institutional translation, which includes legal translation, is culture dependent; making it typical for particular culture' (Newmark, 1988, p. 151).

Legal translation is a specialized, culture dependent translation, and it is the legal translators" task to stay faithful to the intent, tone, and the format of the original, source legal document, yet make the text clear and understandable to the audience, without taking any creative liberty, which is considered unacceptable at all in the formal constraints of legal language.

Two areas in law and language are of interest. The first one is the interest in the use of language in law, while the second one is the interest in using philosophy of language to address problems of the nature of law. Some problems in each area will be outlined and the start is with a brief historical note on the linguistic preoccupations of legal philosophers.

## 1.1 Objective of the Study

This research aims to provide a description of legal language, including its development and its distinctive features. It also deals with the characteristics of legal text type in Arabic and in English with special reference to the language of contracts and the problems of translation between the two languages.

## 1.2 Research Questions

The research questions are focused primarily on the overall quality of the translations and specifically on the translational way-outs and solutions of some problematic points and the linguistic analysis of the two translated contracts, which are described when analyzing these two texts and in what ways have legal translators from Arabic into English and vice versa made deviations in meaning and the features of the legal language.

## 1.3 Significance of the Study

According to Jersy Wroblewski (1988) (cited in El Achkar et all., 2005), legal language comes from natural language to which specialized words and specific meanings corresponding to the legal nature of that discourse are added. The difference between natural language and legal language is mostly semantic, not syntactic. It depends on the words as well as on their specific meanings.

As inappropriate translation of a text may lead to major problems or lawsuits or may also incur a loss of money, only professional translators specializing in translating legal texts are supposed to be competent enough to translate such documents from the source language (SL) to the target language (TL). Legal translators often consult bilingual law dictionaries, encyclopedias and/or websites. Most forms of legal texts require clearly and accurately defined rights and duties for all. It is very important to ensure precise correspondence of these rights and duties between the source text and the translated target text.

Legal translators must therefore be competent in at least three key areas: first, comparative law that requires the possession of a basic knowledge of the two legal systems for the SL and the TL. Secondly, specific terminology that requires the translator to be familiar with the specific and accurate term of the particular legal field dealt with in the SL and the TL texts. Thirdly, legal writing style which requires the professional translator to be highly competent in the specific legal writing style of the translated target language.

In the legal field, where legal terms are grounded in country-specific legal systems, legal translators face numerous factors that influence their ability to translate certain terms, which will inevitably lead to a major translation problem.

Most of the significant reference textbooks on legal translation are solely devoted to questions of terminology, while characteristic considerations tend to be ignored.

History is filled with examples where ideas have been lost in translation, and often with tragic consequences. Therefore, this research is important, as far as people who work in the field of legal translation and legal systems are concerned. In order to avoid unintentional consequences of inappropriate legal translation, it is essential to understand the features of legal language and how inaccuracies have occurred in the past, and how they can be avoided in the future.

## 1.4 Organization of the Study

This book consists of two parts. The first part consists of three chapters. Chapter one includes the introduction, historical background, significance of the study, research questions and related literature review. Chapter two introduces the language of law in general. Chapter three deals with the translation of legal texts and documents and the sources of difficulties in translating legal documents, as well as legal language features and characteristics. Chapter four defines the contract as a subfield of law and deals with the stylistic specifics of contracts in general. The second part of this book deals with contracts as a sub-genre of legal texts. Chapters five introduces and analyzes the empirical study. The empirical study is based on an analysis of two contract translations by two different legal translation agencies. It seeks to find out the main points of problems; whether it is the understanding of the SL, finding an appropriate translation way-out, or the style and understandability of the TL text. Conclusions and recommendations follow in Chapter six.

## 1.5 Review of Literature

Translating legal documents is regarded by many researchers as one of the most arduous endeavors; research on legal translation between English and Arabic is predominantly restricted to purely semantic or syntactic issues. For instance, AbuGhazal (1996) outlined a number of syntactic and semantic problems in legal translation from English into Arabic, by analyzing graduate students translations. He primarily aimed at detecting the linguistic and translation problems facing translators in general.

Bentham (1782) developed a radically empiricist theory of the meaning of words, which supported his utilitarianism and his legal theory. He wanted to abandon what he considered to be a nonsensical mythology of natural rights and duties. Linguistic acts struck him as respectable empirical phenomena, and he made them an essential element of his theory of law. He based his "legal positivism" on his claims about the meaning and use of words. Language had not been especially important to the natural law theorists whose views Bentham despised, so philosophy of language has no special role in explaining the nature of law. Bentham (1782), by contrast, needed the "sensible" phenomenon of a perceptible, intelligible linguistic act for his purpose of expounding the nature of law by reference to empirical phenomena.

In 1994, Hart's book "The Concept of Law" raised issues that have occupied legal philosophers ever since and at the same time; he borrowed

J.L. Austin's method of "using a sharpened awareness of words to sharpen our perception of the phenomena" (Hart, 1994, p. 14). That method sets the background for the two problems: "Language and the normativity of law", and "The Semantic Sting". Hart's observations about the use of language in law were the basis of an innovative approach to the challenge of explaining the normativity of law, a problem for legal theory that can be clearly seen, Hart claimed, in the faulty explanation of normative language that had captivated Bentham.

Ronald Dworkin (1968), has opposed Hart's theory of law on the basis that his whole approach to legal philosophy is undermined or "stung" by his approach to words, that he wrongly thought "that lawyers all follow certain linguistic criteria for judging propositions of law" (Dworkin, 1986, p. 45). That is Dworkin's "semantic sting" argument, an argument in the philosophy of language that has set an agenda for much recent debate in philosophy of law.

Mellinkoff (1963) was concerned with what the language of law is and investigated the history of legal language, and brought the language of law down into practice.

In their book, Crystal and Davy (1969) devoted one chapter to the language of legal documents, supported with examples taken from an insurance policy and a purchase agreement. They wrote that "of all the uses of language, it [legal language] is perhaps the least communicative, in that it is designed not so much to enlighten language-users at large as to allow one expert to register information for scrutiny by another" (p. 112). A legal text for them exhibits a high degree of linguistic conservation, included in written instruction such as court judgments, police reports, constitutions, charters, treaties, protocols and regulation (p. 205). They described legal texts as formulaic, predictable and almost mathematic.

Newmark (1982) is another theorist of general translation to comment on legal translation. He noted a difference in the translation of legal documents for information purposes and those which are "concurrently valid in the TL [target language] community." Concerning "foreign laws, wills, and conveyancing" translated for information purpose only, Newmark suggested that literal or semantic translation, in his own term, is necessary. On the other hand, he stressed that "the formal register of the TL must be respected in dealing with documents that are to be concurrently valid in the TL community." In Newmark's view, such translations require the communicative approach that is target language-oriented (Newmark, 1982, p. 47). In this regard, Newmark is one of the few linguists to recognize that the status of a legal text is instrumental in determining its use in practice.

Emery (1989) explored the linguistic features of Arabic legal documentary texts and compared them with their English counterparts. Emery ended up recommending that trainee translators should develop a sense of appreciation of the structural and stylistic differences between English and Arabic discourse to help produce acceptable translations of legal documents. Though he only made limited inroads into the area of legal translation theory or practice, Emery's article is actually one of the very few works that investigated general features of Arabic legal language, an area of research that has inexplicably been disregarded by Arab translators and theorists.

Al-Bitar (1995) illustrated how legal language differs from other common-core English varieties. In her study, she studied twelve bilateral legal agreements and contracts signed during the years 1962-1993. She investigated two main areas of nominal group in addition to other grammatical units: complexity of the noun phrase and type of modification. Her main conclusions were that the differences lay in the heavy use of complex noun phrases and the high frequency of whrelative clauses and prepositional relative clauses as post-nominal modifiers of the finite in legal texts (pp. 47- 62).

House (1997) distinguished between two basic types of translation strategies: overt translation in which the target text receivers are overtly not the same as the source text receivers, and covert translation in which the target text receivers are the same as the source text receivers. According to House, the latter group includes texts that are not addressed exclusively to the source texts receivers, such as commercial texts, scientific texts, journalistic articles … etc. (pp. 1997-194). Although House does not mention parallel legal texts, which would also belong to this group; in fact all special purpose texts would fall under her category of covert translation.

Hickey (1998) argued that any translation of a legal text must be able to affect its readers the way the ST was able of doing to its readers. She states that the translator must ask herself how the original text reader would have been affected and ensure an analogical TT[1] reader will be affected similarly by his reading of the text but not by any other means (pp. 224-225). Hickey failed to see that a TT might be directed towards different readers in a different context. In this case, it is pointless to pursue a similar effect on the part of the translator.

Hatim, Shunnaq and Buckley (1995) occupied themselves with listing legal texts and their model translations, without setting foot in the field of legal translation theory.

The above studies ignored the pragmatic factors related to legal discourse. Such an approach, which extensively stresses the sensitivity of legal texts, may contribute to the creation of misconceptions about legal translation. In other words, it helps depict it as a process of interlingual transfer (Sarcevic, 2000, p. 2) within an array of restrictions.

Sarcevic (2000), in her book which has a comprehensive survey of legal translation, wrote in connection with parallel legal texts, "While lawyers cannot expect translators to produce parallel texts which are equal in meaning, they do expect them to produce parallel texts which are equal in legal effect. Thus the translator's main task is to produce a text that will lead to the same legal effects in practice" (p. 71).

As Sarcevic (2000) indicated, "the basic unit of legal translation is the text, not the word" (p. 5). Terminological equivalence has an important role to play, but "legal equivalence" used to describe a relationship at the level of the text may have an even greater importance" (p. 48). The translator must be able "to understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have, and how to achieve that legal effect in the other language" (pp. 70-71).

Dickins et al (2003) offered a progressive representation of various translation problems, accompanied by lots of practical work in developing underlying principles for solving the problems. Theoretical issues were discussed only in so far as they relate to developing proficiency in method. Although a wide range of texts were dealt with in this book, little attention was directed towards legal texts in the form of pedagogic practice within a framework of more general linguistic issues ignoring the peculiarity of legal texts.

Butt and Castle (2006) burrowed into the roots of traditional legal language and its peculiar characteristics that make legal documents aloof from its users. They proposed a step-by-step guide to drafting in the modern style, using examples from four types of legal documents: leases, company constitutions, wills and conveyances. Moreover, they emphasized the benefits of drafting in plain language and confirming the fruitfulness of its use. Like Mellinkoff (1982), they surveyed the reasons for the current alarming state of legal drafting, as well as provided guidance on how to draft well. Their book is the most recent addition to the Plain English Movement that is discussed in the next chapter. It argues that it is actually "safe" and constructive to break away from old ways of legal drafting into simpler, more communicative ones.

Making use of the available literature on pragmatics, the concept of legal equivalence, and the changing role of the translator, the study

scrutinizes the applicability to the translation of contracts through comparing and analyzing the translation under investigation.

## 1.6 Origins and History of Legal Language

Legal language has had its own historical development, which is parallel to, but is often independent of, the historical development of the rest of the English language. Ordinarily, languages change over time through use—words develop new meanings and old meanings are lost; archaic terms drop out of the language; grammatical structures shift to reflect changes in the status of competing dialects. But legal language develops many of its forms and meanings through a legal and not an ordinary linguistic process.

A good example of this is the legal meaning of "fresh" as in "fresh fish. "The lay person's understanding of "fresh fish"—based on the most common current meaning of the word "fresh," as it has developed--is likely to be "fish that was recently caught." But the legal definition, as set by regulations, is fish that has never been frozen, no matter when it was caught. It is the courts, legislatures, and government agencies, which decide the legal meanings of terms, not ordinary usage and historical change.

How did legal language get to be the way that it is? How did it develop? The answer to such questions is through the history of the language of lawyers that was mentioned in the Legal Language book by Tiersma (1999).

### 1.6.1 Celts, Anglo-Saxons, and Danes

**The Celts**

In "Legal Language", Tiersma (1999) mentioned that there are virtually no remnants of the legal language of the original Celtic inhabitants of England, although there are some indications that it was poetic and not particularly comprehensible for ordinary people, a theme that continues to resonate. (http://www.languageandlaw.org/NATURE. HTM)

**The Anglo-Saxons**

Tiersma (1999) also mentioned that the Anglo-Saxons pushed the Celtic language to the fringes of Britain. Some Anglo-Saxon words or

legal terms have survived until today, including "writ", "ordeal", "witness", "deem", "oath" and "moot". Words had an almost magical quality in Anglo-Saxon legal culture. Their law used alliteration and conjoined phrases, a practice that has, to a limited extent, survived to the present (as in "rest", "residue" and "remainder"). The increasing linguistic complexity of Anglo-Saxon laws led to more complicated legal language, suggesting that the complexity of legal language may to some extent simply reflect an increasingly complicated society. (http://www.language andlaw.org/NATURE.HTM)

**Latin and the Advent of Christianity**

Tiersma (1999) also added that Christian missionaries landed in 597 and (re)introduced Latin. Latin terms, that entered legal language in this period, include words like "clerk". One impact of Christianity was to encourage the use of writing, which was later to have a tremendous impact on the law. Although Latin was incomprehensible to most of the population, it enhanced communication at a time when there was no standard for written English. By the end of the thirteenth century, statutes written in Latin started to become common. Royal courts were established and a class of professional lawyers emerged. (http://www.languageandlaw. org/NATURE.HTM)

## 1.6.2 The Norman Conquest and the Introduction of French

**William the Conqueror Invades England**

Tiersma (1999) further mentioned that the Norman Conquest in 1066 placed French-speaking Normans in virtually all important positions in England; French thus became the language of power. Virtually all English words relating to government are originally French. The Normans initially used Latin rather than French as a written language of the law. Only around 200 years after the conquest did French statutes appear. They remained French until the 1480s. Strong evidence that the courts operated in French did not appear until the end of the 13th century. The use of French in courts seemed tied to the expansion of jurisdiction of royal courts during this period; royal courts were logically conducted in French, which was still the language of the aristocracy and royal household at this time. In a sense, therefore, adoption of French for legal purposes could initially have promoted communication with those most affected by royal law. (http://www.languageandlaw.org/NATURE.HTM)

Ironically, at the same time that French was in ascendancy as the language of the law, use of Anglo-French as a living language was beginning to decline. It is probably no accident that this was also the period when a professional class of lawyers arose. Soon after 1400, Anglo-French was virtually extinct as a living language, but it had become firmly entrenched as the professional language of lawyers. (http://www.language andlaw.org/NATURE.HTM)

**The Continuing Use of Latin**

According to Tiersma (1999), throughout this period, Latin continued to be used as a legal language. It came to be known as "Law Latin," and included various legal terms of French origin, as well as English words when clerks did not know the Latin. Legal maxims, even today, are often in Latin, which gives them a sense of heightened dignity and authority. Names of writs (mandamus, certiorari) and terminology for case names (versus, ex rel., etc.) are still in Latin, perhaps a reflection of the use of Latin for writs and court records until the early 18th century. (http://www.languageandlaw.org/NATURE.HTM)

**Law French**

Tiersma (1999) also mentioned that French eventually became a language used only by lawyers, and became known as "Law French." Early efforts to abolish it in court proceedings failed. Possible reasons for the retention of Law French after its demise as a living language include claims that it allowed for more precise communication, especially with its extensive technical vocabulary, the dangers of having ordinary people read legal texts without expert guidance, the conservatism of the profession, and a possible desire by lawyers to justify their fees and to monopolize provision of legal services. If nothing else, it reflects the conservatism of the profession at the time. (http://www.languageandlaw.org/NATURE. HTM)

Some of the characteristics of Law French that have left traces in today's legal language include addition of initial ***e*** to words like ***squire***[2], creating ***esquire***; adjectives that follow nouns ***(attorney general);*** simplification of the French verb system, so that all verbs eventually ended in ***-er***, as in ***demurrer***[3] ***or waiver***; and a large amount of technical vocabulary, including many of the most basic words in English legal system. (http://www.languageandlaw.org/NATURE.HTM)

**Trilingualism and Code-switching**

According to Tiersma (1999), during this period, lawyers had to be trilingual in French, Latin and English. Each language was traditionally used in specified domains. Even more than today, perhaps, law was in those days a profession of words. (http://www.languageandlaw.org/NATURE.HTM)

## 1.6.3 The Resurgence of English

**The Demise of Latin and Law French**

According to Tiersma (1999), use of Latin and Law French for legal purposes gradually declined, and was given a final coup de grâce in 1730. (http://www.languageandlaw.org/NATURE.HTM)

**The Increasing Importance of Writing and Printing**

Tiersma (1999) also mentioned that Legal language was originally entirely oral. If there was a writing of a legal event, it was merely a report of the oral ceremony. Eventually, the writing became a type of authoritative text, the operative event itself. What now mattered was what was written, and what was said became largely or entirely irrelevant. This progression can be seen in written reports of court proceedings, which first merely documented an oral event, but which later became the event itself, so that what is said in an appellate court in the United States today is legally immaterial; what matters is the written opinion. Legislation also went through this progression. Printing contributed to these trends by allowing for a standardized and widely-available version of the written text. Now all that matters is the enacted text of a statute, or the published version of a judicial opinion, which has led to an ever increasing fixation on the exact words of legislation, and has permitted the development of the doctrine of precedent. (http://www.languageandlaw.org/NATURE.HTM)

**Further Developments in England**

Tiersma (1999) also stated that as pleadings became written, rather than oral, they also became subject to increasing textual scrutiny and were often rejected for the smallest linguistic slip. This encouraged use of Form

Books, which had a conservatizing effect on legal language by promoting continuing reuse of antiquated phrasing. And legal documents became ever longer as clerks and lawyers charged by the page. In part for these reasons, the legal profession began to find itself in low repute. (http://www .languageandlaw.org/NATURE.HTM)

**Legal English throughout the World**

Tiersma (1999) also mentioned that English colonizers transported legal English throughout the British Empire, including North America. Despite antipathy towards lawyers and the English, the Americans maintained English legal language. The Articles of Confederation were linguistically full of legalese.

Although Thomas Jefferson advocated improving the style of statutes, it did not really follow through. The Declaration of Independence and American Constitution are elegant and relatively simple, but in general, American legal language closely resembled that of their former colonial masters. The same is true in other former English colonies. To a large extent, the retention of English legal language is closely related to the retention or adoption of English common law. People who adopt concepts from another culture tend also to adopt the words used to describe those concepts. (http://www.languageandlaw.org/NATURE.HTM).

It was evidenced that the English legal profession was trilingual: it used Latin, French, and English and this suggests the term "legal trilingualism" (Tiersma, 1999, pp. 33–34). Latin was for written pleadings and legal records; English was for hearing witnesses, while French was for oral pleadings. Sometimes, all three languages would appear in the same legal document. These languages also influenced one another reciprocally.

A good example is a case report, from the mid-16th century, which begins in law French, then changes to English due to the language of the bond at issue forming the subject of the case (the text is also littered with Latin expressions) and ends up again in law French (Tiersma, 1999, pp. 33–34). All of this largely explains the features of legal English today.

There are many relationships between language and law. In modern societies, most rules of law are written rules. They are laid down in statutes or can be found in court judgments. It is difficult to imagine a modern society without written legal texts. As a consequence, law and language are closely related. Law needs language. In the next Chapter, legal texts are discussed to identify some problems and difficulties in translating legal texts.

# CHAPTER TWO

# LEGAL TEXTS

The research aims at identifying some of the problems that Arabic translators face in translating legal texts and, as far as possible, suggesting viable solutions. Legal language was originally oral; any writings served only as a report of the oral ceremony (Tiersma, 1999, p. 36). Although the translation of legal texts is among the oldest and most significant and the most immensely produced all over the world, legal translation has long been neglected in both legal and translation studies (Sarcevic, 2000, p. 1). The legal translator plays a major role in the process of communication within diverse legal systems. "Translation of legal texts leads to legal effects and may even induce peace or prompt a war" (Sarcevic, 2000, p. 1).

Legal texts are formulated in a special language that is subject to particular syntactic, semantic and pragmatic constraints. Furthermore, legal language is system bound, and hence is perceived of as a product of a specific history and culture. The language of law mainly involves "parole" rather than "langue". Recognizing that "parole" is inseparable from "judicial acts", the language of law can be described as a "language of action". Sarcevic (2000) states that "the primary role of language in normative legal texts is to prescribe legal actions, the performance of which is intended to achieve a specific goal" (p. 133). Similarly, Beaugrande and Dressler also regard a legal text as "a communicative occurrence produced at a given time and place and intended to serve a specific function. It is the function of legal texts that makes them special: they are instruments of law" (1981, p. 3). The written legal text is, above all, intended to be read, and understood perhaps only after several re-readings. Crystal and Davy express this idea as follows:

> It is essentially visual language, meant to be scrutinized in silence: it is, in fact, largely unspeakable at first sight, and anyone who tries to produce a spoken version is likely to have to go through a process of repeated and careful scanning in order to sort out the grammatical relationships which give the necessary clues to adequate phrasing (1969, p. 194).

Tiersma (1999: 139) classifies legal texts into three classes according to function: operative documents, expository documents and persuasive documents. Operative documents have a performative function, in other words, the function of performing an act by the very fact of being uttered. Examples given are pleadings, petitions, orders and statutes, and private legal documents such as wills and contracts. Due to the nature of performative functions, operative documents have a rigid structure as well as formulaic language, and are therefore difficult for lay people to understand. On the other hand, expository documents such as office memoranda and persuasive documents like briefs to court are not as formulaic as operative documents, and have a less rigid structure.

## 2.1 The Notion of Legal Language – Real or Fictitious

The notion of legal English as a variety of language (Tiersma 1999, p. 49) has often been used in order to highlight its differences from the stereotypical interpretation of ordinary language, without assuming that it may for this reason be seen as a different language.

Legal language has also been defined as a dialect, but this designation does not appear appropriate if the idea of dialect is understood to refer primarily to notions of geographical location. From another perspective, Tiersma (1999, p. 133) also mentions legal dialects and distinguishes, for instance, between the legal English spoken in British contexts and American contexts. Some interesting examples related to (in particular lexical) differences between the two spheres are mentioned in Tiersma (1999, p. 134):

> —Sometimes one word has different meanings in various jurisdictions. In American legal English, a judgment is the disposition or outcome of a case. In England judgment also refers to the statements of reasons for the disposition, something that American lawyers call an opinion. An appellate court affirms or reverses a lower court's judgment in the United States, while it allows the appeal or dismisses it in England. A brief is an argument to the court in the United States, while it is a written case summary for the guidance of a barrister in England. Corporate law in America is company law in England. Legal idioms may also differ from place to place. An American lawyer is admitted to the bar, while a British barrister is called to the bar and may eventually talk silk (become a Queen's Counsel). (Tiersma 1999, p. 134).

The terms, jargon or argot, are also occasionally used to identify specific professional languages, but they often tend to be associated with an aura of complexity and incomprehensibility. Similarly, expressions

such as legal lingo and legalese tend to be attributed a relatively negative connotation and are not frequently used. With particular (but not exclusive) reference to the language used in the courtroom, Danet (1980) talks about language in the legal process, and Levi and Walker (1990) often use the expression language in the judicial process. On a practical note, scholars have also remarked that there has been a tendency to avoid the term legal in order to circumvent potential confusion with lawful (Mellinkoff, 1963).

## 2.2 Definition of Legal Texts

A legal text is very different from ordinary speech. It is any piece of writing that carries an obligation or allows certain actions or things, makes a binding promise, or sets out penalties to be imposed in case of violation. This is especially true of authoritative legal texts: those that create, modify, or terminate the rights and obligations of individuals or institutions. Such texts are what Austin (1962) might have called "written performatives". Lawyers often refer to them as operative or dispositive. Authoritative legal texts come in a variety of genres. They include documents such as: constitutions, contracts, deeds, orders/judgments/decrees, pleadings, statutes, wills. Each genre of legal text tends to have its own stereotypical format and is generally written in legal language or "legalese". Thus, a contract contains one or more promises, a will contains verbs that transfer property at death, and a deed transfers property during the lifetime of its maker.

"Laws are in essence attempts to control human behavior, mainly through a system of penalties for law breaking. The Law exists to discourage murder and theft, and bad faith in business dealing among other offences". (Gibbons, 1994, p.3)

The concern is a special language that has been developed to become the domain of special people, in a professional rather than a social sense. Referring to a definition of special languages as "semi-autonomous, complex semiotic systems based on and derived from general language", Sager (1990) makes the point that the effective use of such special languages "is restricted to people who have received special education and who use these languages for communication with their professional peers and associates in the same or related fields of knowledge" (p. 105).

Gibbons (1994, p.3) makes the point that "… the basic concepts of rights and obligations of a member of a community are deeply embedded in the fabric of language itself, and existed before there were codified laws." He argues that language precedes laws, and has hence constructed

and continues to construct them, rather than the opposite. Even the concepts of "murder" and "guilt", for instance, did exist in languages even before laws were conceived or codified (Gibbons, 1994, p.3).

Another view of the origins of legal texts can be gleaned from Maley:

> "Particularly in literate cultures, once norms and proceedings are recorded, standardized and institutionalized, a special legal language develops, representing a predictable process and pattern of functional specialization. In the Anglo-Saxon common law system, a discrete legal language has been apparent since post-conquest England, which in many essentials has persisted to the present day." (Maley, 1994, p.11).

Although Maley can be interpreted as saying that legal concepts had existed first and that a special language was created or developed to cater for these concepts, it can be argued that the "discrete legal language" referred to was in fact part of the existing language which was then modified, or simply exclusively allocated for use by legal practitioners and judges. There is evidence to support the second interpretation. We all use the words "actual", "bodily" and "harm" in our everyday conversation. They are neither technical nor highly learned terms. In combining the three words together, the Penal Code has given a completely new meaning to this combination in the criminal charge "assault occasioning actual bodily harm".

The word "actual" is the key element in proving the charge against the offender. It means that the skin of the victim should have been opened through the use of personal force or of a certain weapon before the charge could be found proven. More interestingly, from a technical viewpoint is the fact that:

> —If a person is caused a hurt or injury resulting, not in physical injury, but in an injury to the state of his mind for the time being, that is within the definition of actual bodily harm. An assault which causes a hysterical and nervous condition is an assault occasioning actual bodily harm." (Bartley, 1982, p. 59).

Thus, we have a situation where "actual bodily" actually refers to "bodily" as well as "mentally". This is obviously contrary to our normal understanding of the word bodily to mean just the opposite of "mentally". "Weapon" is another term that is used differently in a legal sense. Contrary to the general idea we usually associate to this word, namely war machines and firearms, in law it simply means anything that is used to commit an assault offence. But back to "actual", the precise meaning of the term, in a legal sense, becomes even more important and crucial when

it is contrasted with another term, "grievous", in another criminal charge under the Act: "assault occasioning grievous bodily harm". "Actual" and "grievous" are modifiers of crimes at different levels of seriousness expressed through the use of words that had already existed in the English language but were then made to acquire specific and precise meaning for the proper conduct of law. The superlativeness of "grievous" is obvious in this charge as it was in Mark Anthony's "And "grievously" hath Caesar answered it" (William Shakespeare, Julius Caesar; Act 3 Scene 2). The time span separating the two usages of this term, nearly three hundred years, has changed neither its main concept nor its superlativeness. It is only that the law has given it a significantly technical weight which the prosecution would usually endeavor to prove and the defense would either deny or downgrade to "actual", in which case the lesser charge would then carry a lesser sentence.

It is this special usage, or special meaning, given to ordinary words that made Mellinkoff theorize that "… the language of the law depends for survival upon those it unites in priesthood – the lawyers … only the lawyers can exploit the capabilities of the language of the law …." (Mellinkoff, 1963, pp. 453 - 454). Others have even suggested that the legal language can be reduced to English only in translation (within the same language), and consequently that the language of the law is not yet a part of English until such translation process has been achieved.

Morrison (1989), who is critical of Mellinkoff's "rhetoric" and the "excesses" of others, makes the point that the debate surrounding the language of law is not unique, as it has also existed in the area of philosophy and mathematics, among others. The question at the core of the controversy, according to her, is whether or not lawyers, after all, use the language, and if the answer is in the negative, as some suggest, they actually failed to prove their case beyond doubt and in fact had created more questions than answers. She sums up her argument, without exaggerating to prove the correctness of her point of view, but strongly enough to rebut the argument that the language of law and the ordinary language are not one and the same.

> "Is there, then, "no truth" in some form of the "expert's only" study? The answer is, there is some truth. There is something distinctive about how lawyers speak, although this feature is not distinctive to only legal language; and there is something distinctive about the meanings of some "legal" words although this distinctive feature falls short of turning the language of the law into a technical language that only lawyers speak and falls short of being unique to legal language." (Morrison, 1989, pp. 286-287)

The distinctness that Morrison (1989) refers to is in the high level of care lawyers" use in their speech rather than technicality, and that this level of care itself is responsible for making the language of law somewhat alien to non-lawyers. She further makes the point that speaking carefully rather than technically is not exclusively limited to the legal profession.

Whilst it is true that lawyers make a distinction between "verdict" and "judgment", "accused" and "defendant", "summons" and "subpoena", it is also true that this is motivated by lawyers" preference for particular terms to refer to particular persons, things or concepts. This is not unlike the colorist whose range of colors he knows by name is wider than that used by lay persons. A colorist may refer to Persian turquoise or American turquoise, while a lay person may refer to both as shades of blue. In both cases, the use by lawyers and colorist of the "preference-among-meanings phenomenon", as Morrison calls it, that is the preferred term chosen from a range of very close options, could lead to difficulties in conversations between lawyers and colorists on the one hand and lay persons, on the other. She concludes that both use their words more carefully, but not technically. However, she refers to their words more carefully, but not technically.

However, she refers to their words as "jargon" or "trade talk", without elaborating on whether this in itself in not considered a precursor for the existence of a technical language, which I call here "legal language".

## 2.3 Legal Language as a Distinctive Genre

Legal genres are defined in the following manner: "The highly institutionalized and sometimes ritualized discourse of the law often follows regular patterns; organized sequences of elements which each play a role in achieving the purpose of the discourse". (Gibbons, 1994)

Some fundamental written genres in legal English are statutes (legislative writings), cases, law reports, law review journals and law textbooks. The language of law functions as a spoken and written medium for exchanging information between people participating in various legal situations happening in different legal settings. For centuries it has succeeded in keeping its special status. Legal language is a distinctive genre of English. Maley (1994) considers it "a medium, process and product in the various fields of the law where legal texts, spoken or written, are generated in the service of regulating social behavior" (p. 11). From historical records it is apparent that the language of law has always