

A Study on Translation Strategies of Legal English Texts from the Perspective of Functional Equivalence Theory

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Abstract

Legal translation is a compound discipline, which involves knowledge of different subject areas. From the perspective of the functional equivalence theory proposed by Nida, this paper will explore the equivalence of legal texts from the four levels of vocabulary, syntax, text and style respectively, aiming at summarizing the main strategies for translating legal English texts, so as to provide translation ideas in legal translation practice.

Keywords

Legal English, Functional equivalence theory, Translation strategies.

1. Introduction

Legal translation is a composite discipline, which combines the knowledge and skills of linguistics, law and translation and other disciplines, and puts forward extremely high requirements for the interdisciplinary literacy and ability of translators. At present, the translation of legal texts in China is not mature and lacks complete, standardized and accurate theoretical guidance and translation strategies. Moreover, legal texts have serious and standardized language characteristics, which make them use unique professional terms to achieve the goal of expressing accurately and without emotional color. Therefore, the accuracy of legal text translation is particularly important. Once the translation is wrong, it will destroy judicial justice and legal authority, resulting in serious legal consequences for the parties concerned. From the perspective of functional equivalence theory, this study will analyze the main strategies of legal English text translation from the four levels of vocabulary, syntax, text and style to ensure the accuracy and effectiveness of translation.

Based on the professional background of Peking University Law School, PKU Legal English Network ensures the professionalism and authority of the information. In addition, the website has a wide range of legal texts, fast updating speed and high translation quality, so the English translation of this study is selected from this website.

2. Functional Equivalence Theory

“equivalence” is a key issue in translation studies. Around this issue, many theories have been put forward in the field of translation, among which the functional equivalence theory of Nida 1964 is the most influential one. Nida proposed the principle of “dynamic equivalence” : the target language readers’ response to the target information should be dynamically consistent with the source language readers’ response to the original text, that is, the semantics and style of the source language should achieve the dynamic equivalence of information as much as possible. Therefore, “the translator should focus on the meaning and spirit of the original text, and not adhere to the language structure of the original text, that is, not adhere to the formal

correspondence” [1]. The form and semantic structure of the original text can be reorganized in an appropriate way to achieve dynamic equivalence. However, after the introduction of the theory of dynamic equivalence, it has caused a lot of misunderstandings. It is mistaken that translators only need to translate the content without regard to the language form. In view of this, Ward and Nida(1986) changed “dynamic equivalence” to “functional equivalence” (equivalence) and supplemented the concept of “information” in the original dynamic equivalence theory, that is, the source language information is further defined as ideological content and linguistic form, and pointed out that functional equivalence is not only information content equivalence, but also formal equivalence as much as possible [2].

Therefore, translators should abide by this principle when translating, and should ensure that the semantic information of the source language can be accurately transmitted in the target language while maintaining the style and characteristics of the source language as much as possible, so that the target language readers can obtain the same information as the source language readers, which can effectively reduce the misunderstanding and injustice caused by the language barrier, and safeguard the rights of the parties while maintaining judicial justice and legal authority.

Using the functional equivalence theory proposed by Nida, this study explores the translation of legal texts from the perspectives of lexical, syntactic, textual and stylistic equivalence, aiming to summarize the main strategies for translating legal English texts, so as to provide translation ideas in the practice of legal translation.

3. Lexical Equivalence

3.1. Legal Terminology

Legal terms are only used in the field of law and have a single meaning, accurate expression and no emotional color.

Criminal responsibility is not to be borne for an act of legitimate defense that is under taken to stop present unlawful infringement of the state’s and public interest or the rights of the person, property or other rights of the actor or of other people and that causes harm to the unlawful infringer. (Article 20 of the Criminal Law of the People's Republic of China)

In Example 1, there are several professional terms in the original text, including “Criminal responsibility”, “legitimate defense”, “unlawful infringement” and “infringer”. The translation of the English version uses legal terms without any arbitrary alteration or substitution, which makes the English version and the terms in the original text convey the same information in both Chinese and English contexts, ensuring the equivalence of the information and form of the target language and the source language, which helps to ensure the accuracy and consistency of legal information and avoid ambiguity and misunderstanding.

3.2. The Common Words are Transformed into Legal Professional Words

Some legal words actually derive from ordinary words in everyday use, but are given specific, specialized meanings in a legal context, see Table 1.

Table 1: The common meaning of some common words compared with the legal meaning

Vocabulary	Common meaning	Legal meaning
Consideration	Kaolv	Duijia
Limitation	Xianzhi	Shixiao
Offer	Zhudongtichu	Yaoyue
Acceptance	Jeishou	Chengnuo
Minor	Jiaoxiaode	Weichengnianren

People’s governments at all levels shall attach importance to and strengthen the protection of minors. The institutions of the people’s governments at or above the county level in charge of women’s and children’s work shall organize, coordinate, guide, and supervise the effective completion of the work on the protection of minors by the relevant departments within the scope of their respective duties. (Article 9 of the Law of the People's Republic of China on the Protection of Minors)

In Example 2, the word “Minor” is interpreted as an adjective in a common Chinese context as follows: slight; And interpreted as a noun in a legal context as: juvenile. The English translation translates the “weichengnianren” as “minor”, achieving semantic equivalence. It can be seen that translators should pay attention to the meaning of common words in the legal context when translating, so as to avoid the situation of mistranslations and omissions.

3.3. Formal Vocabulary

In a legal context, more formal, normative words are needed to express the meaning of a text, see Table 2.

Table2: Comparison of the meanings of some everyday English words and legal English words

Meanings of everyday English words	Legal English vocabulary meanings
Before	Prior to
According to	In accordance with
If	Where, provided that
For	For the purpose of
By	By virtue of

For the purposes of this Law, “insiders who have access to insider information” means the entities and individuals that, by virtue of their operating status, management position, supervisory role, or advantages in position, among others, have access to or obtain insider information. (Article 15 of Futures and Derivatives Law of the People's Republic of China)

In Example 3, “benfasuocheng” is translated into “For the purpose of” and “youyu” is translated into “by virtue of”. “For” and “by” have more than 20 interpretations as prepositions in the Oxford Advanced English-Chinese Dictionary alone. If “For the purpose of” and “by virtue of” are replaced by “For” and “by” in the translation, the scope of reference in the original text will be expanded. Therefore, the translator uses the method of additive translation to express the meaning of the text by adding more formal and standardized words, so as to realize the dynamic equivalence of lexical semantics.

3.4. Archaic Words

The frequent use of archaic words is also a characteristic of legal English. There are two archaic words: Old English and Middle English. The most common archaic words are the adverbs here, there, and where compound with prepositions. The use of compound words is a major feature of Old English vocabulary [3], see Table 3.

Table3: Part of the modern English meanings of old words

Archaic words	Modern English meanings
hereby	by this means
thereunto	in the document/place referred to
whereas	given the fact that

The Civil Code of the People's Republic of China, as adopted at the 3rd Session of the Thirteenth National People's Congress of the People's Republic of China on May 28, 2020, is hereby issued, and shall come into force on January 1, 2021.

In Example 4, the use of "hereby" not only adds a solemn and serious atmosphere to the legal document, but also gives it higher authority and formality, making it more convincing.

3.5. Prescriptive Modals

Shall indicates an obligation in a legal document, and the negative form prohibits it. (Article 3 Labor Contract Law of the People's Republic of China)

The principle of lawfulness, fairness, equality, free will, negotiation for agreement and good faith shall be observed in the formation of a labor contract.

In Example 5, "shall" accurately conveys the mandatory and authoritative meaning of the word "yingdang" in the original text, which is the limitation of the principle to be observed when concluding a labor contract, and therefore expresses a kind of obligation and responsibility.

This Convention shall not affect, or be incompatible with, the application of any international convention or national law relating to the regulation and control of transport operations. (United Nations Convention on International MultiModal Transport of Goods, article IV, paragraph 1)

In Example 6, the expression of "shall not" in the original text means "bude", appropriately reflects the legal textual nature of the original text and emphasizes the binding and prescriptive nature of the Convention.

May indicates a right, and its negative form is translated as "bude" in a weaker tone than shall not.

During the process of execution of a rule or decision about an important event, if the labor union or the employees deems it improper, they may require the employer to amend or improve it through negotiations. (Article 4 Labor Contract Law of the People's Republic of China)

In Example 7, "may" expresses the granting of a right, meaning that a union or employee has the right to do so, but it does not mean that they have to. The tone is relatively mild, emphasizing the presence of a right rather than a mandatory requirement.

A worker who engages in part-time employment may conclude a labor contract with one or more employers, but a labor contract concluded subsequently may not prejudice the performance of a labor contract previously concluded. (Article 69 Labor Contract Law of the People's Republic of China)

In Example 8, "may not" is used to express an explicit restriction that a later labor contract may not affect the performance of an earlier labor contract. However, "may not" has a weaker tone than "shall not", and this use reflects the nuance of English in expressing rights and prohibitions, making the language more precise and precise.

4. Syntactic Equivalence

4.1. Use of Simple Short Sentences

Legal language is highly generalistic and is manifested syntactically by the frequent use of short sentences.

All power in the People's Republic of China belongs to the people. (Article 2 of the Constitution of the People's Republic of China)

From example 9, it can be seen that in such simple sentences, Chinese legal clauses often have no subject, while English legal clauses have complete subject and predicate. In English translation, personal pronouns or other nouns can be added as the subject, or active sentences

can be changed into passive sentences. The former is mostly used in colloquial translation, while the latter is mostly used in formal translation [4].

4.2. The Use of Passive Sentences

In actual legislation, the use of the passive voice is unavoidable, especially in Roman law, where the passive voice is more common. In the Chinese legal system and legal texts, the reference is often unclear and the object of reference is omitted, etc., when the passive voice should be used. Moreover, the use of the passive voice is conducive to objectively describing and specifying relevant matters and demonstrating the fairness of legal texts [5]. In addition, the use of passive sentences in legal documents is to express the action itself, highlighting the recipient of the action rather than the executor of the action.

Autonomous organs of ethnic autonomous areas shall have the autonomy to manage their local finances. All fiscal revenue which, according to the state financial system, belongs to an ethnic autonomous area should be autonomously allocated and used by the autonomous organs of that ethnic autonomous area. (Article 117 of the Constitution of the People's Republic of China)

In example 10, when translating the second sentence of the original text, the English translation appropriately adjusts the word order and uses the passive voice “should be autonomously allocated and used”. Indicating that “fiscal revenue” is independently arranged and used by “autonomous organs of that ethnic autonomous area”. This conforms to the customary use of the passive voice in legal English, objectively describes this provision and emphasizes how “fiscal revenue” is used, rather than the executor.

4.3. The Use of Nominalizing Structures

By converting verbs, adjectives and other parts of speech into nouns, or by nominalizing underlying clauses, legal texts can express complex concepts and rules more tightly. For example, 11:

The State protects socialist public property. Appropriation or damaging of State or collective property by any organization or individual by whatever means is prohibited. (Article 12 Constitution of the People's Republic of China)

In Example 11, the English translation converts “qinzhanhuozhepohuai” as a noun and a gerund as “appropriation or damaging”. This reduces the use of verbs, highlights the topic information, and makes the sentence more concise. In addition, by using a nominalized structure, the English translation makes the sentence more structurally balanced and avoids being top-heavy.

5. Text Level Equivalence

From the perspective of discourse function, there are many differences between Chinese and English in style processing and expression habits due to differences in political system, cultural customs and other aspects. Therefore, translators must understand the relevant context and situation when translating to accurately convey the semantics [6].

Where a person who has attained the age of 12 but under the age of 14 commits a crime of intentional homicide or intentional infliction of bodily harm, which has resulted in the death of any other person or the serious disability of any other person for the serious injury inflicted by especially cruel means, and the circumstances are execrable, the person shall assume criminal liability with the Supreme People's Procuratorate's affirmation of prosecution. (Article 17 of the Criminal Law Amendment (11) of the People's Republic of China)

In Example 12, The word “yiman” can be translated as “has reached”, “has achieved”, etc. However, according to the context, the original meaning of this word is “Have reached the age”, so it should be translated as “has attained” in order to accurately translate the meaning of the source language. In addition, the English version has altered the translation order appropriately.

In the sentence “the person shall assume criminal liability with the Supreme People’s Procuratorate’s affirmation of prosecution.” The English translation begins with “effect” followed by “cause”, whereas the original text begins with “cause” followed by “effect”. The English translation makes the source language closer to the ideological content and linguistic form of the target language, and achieves dynamic equivalence.

6. Stylistic Equivalence

Sarcevic divides legal translation into authoritative translation and non-authoritative translation [7]. Authoritative translation refers to a translation of a law passed and entered into force by a national legislature, which is itself a law. Non-authoritative legal translation refers to the translation made for external publicity and other purposes, which does not have legal effect [8]. However, regardless of the type of legal text, translators should abide by the principle of functional equivalence when translating, ensure that the style of the target language is consistent with that of the source language, and maintain the legal characteristics of serious style, concise language and precise wording.

The local people’s governments at all levels shall, according to environmental protection objectives and pollution control tasks, adopt effective measures to improve environmental quality. (Article 28, Chapter III of the Environmental Protection Law of the People's Republic of China)

Zhao Chunyi pointed out that in order to maintain the standardization, solemnness and organization of official letters, more formal words and syntax are often used in Chinese-English translation [9]. In example 13, the translator directly translates “根据” from the original text into “according to”, which is semantically equivalent. However, in terms of legal text translation, “according to” is very colloquial and inconsistent with the serious and formal style of legal text. It is suggested to be translated into “in accordance with”, so as to ensure the consistency of stylistic style between source language and target language and achieve stylistic equivalence between English and Chinese legal texts.

7. Conclusion

The theory of functional equivalence is an important principle guiding the translation of legal texts. Firstly, translators should pay attention to the use of legal vocabulary and the intensity of the negative form of conventional modal verbs. Secondly, translators should understand the syntactic differences between English and Chinese and master the use of different syntactic forms. Thirdly, translators should consider the context and different textual structures in translation of English and Chinese legal texts. Legal translation is not a subjective creation of translators, but is based on the social and cultural backgrounds of the two countries, and fully considers the legal situation and legal meaning of the translated articles [10]. Finally, no matter what kind of legal text, the translation must maintain the formal and solemn style of legal text.

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