



## ORIGINAL PAPER

# The Dynamics of Legal English Lexicon

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### Abstract

The paper is a complex investigation of lexical features and culturally specific elements in legal translation. The applied research is based on analysis of the bilingual corpus (European legal documents). In order to validate the working hypotheses, linguistic, socio-cultural and translational aspects were carefully correlated, with the stated purpose of identifying the recurring problems in the management of specialized lexicon and of the cultivems in the legal translation, considering the increasing importance on which the translations from and into English have been received.

The translation market has imposed high quality standards, and the competence of the translator, in this case the legal translator, is not limited only to technical issues.

**Keywords:** *socio-cultural aspects; which must be carefully managed; different legal systems; different interpretations of terms.*

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### 1.1. The English lexicon and language varieties

With regard to the synchronic features of the English lexicon, further appreciations are to be taken into consideration. Thus, maintaining the concept of central *core* or *Common English*, linguistic research studies emphasize the fact that the lexicon of the English Language displays typical features according to certain language varieties. Specialised classifications of English language varieties provide further the synchronic features of the English lexicon. According to this classification, a graphical representation of the language varieties and their lexical peculiarities would show the following (Quirk 1985: 15):

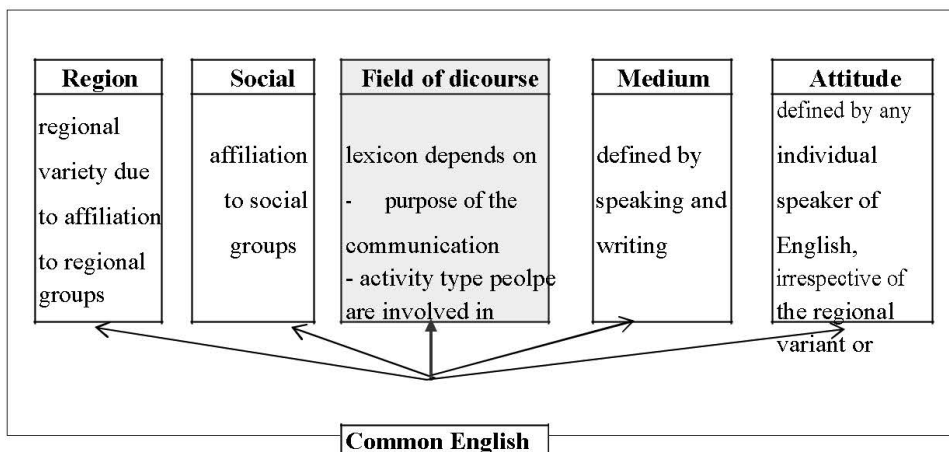


Figure 1 - Language varieties and their lexical peculiarities

As the main interest of the present paper is to present typical lexical features of legal language, in what follows we will focus mainly on certain lexical characteristics of Standard English versus legal English used in written documents.

### 1.2. Language varieties according to field of discourse

Depending on the professional domain, training and interest, the individual can change the register of the language used. Thus, the change of register can be understood as the individual's choice to turn to a particular set of lexical items, which are frequently used for handling the field in question.

The switch to a certain register implies further changes beside the particular set of lexical items. This aspect is clearly emphasised by the language of technical and scientific description. In such cases the passive is common and clauses are often nominalised. Moreover, noticeable grammatical differences are to be found in the language of legal documents.

Generally speaking, literature is a long-established field, though it extends to other fields (Quirk 1985: 24). Furthermore, some fields have certain characteristics in common, for example, legal and religious English have numerous forms peculiar to their respective fields, but both may include usages that are otherwise archaic.

Moreover scientific language covers a wide range of subject matter (psychology, literary criticism, history, physics, medicine), each of which could be regarded as a separate field, though all these varieties belong to the scientific register.

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According to Quirk, the scientific languages number considerable varieties which have developed their own linguistic expression (Quirk 1985: 25). Among these language varieties, legal language lexical peculiarities are to be further presented and analysed.

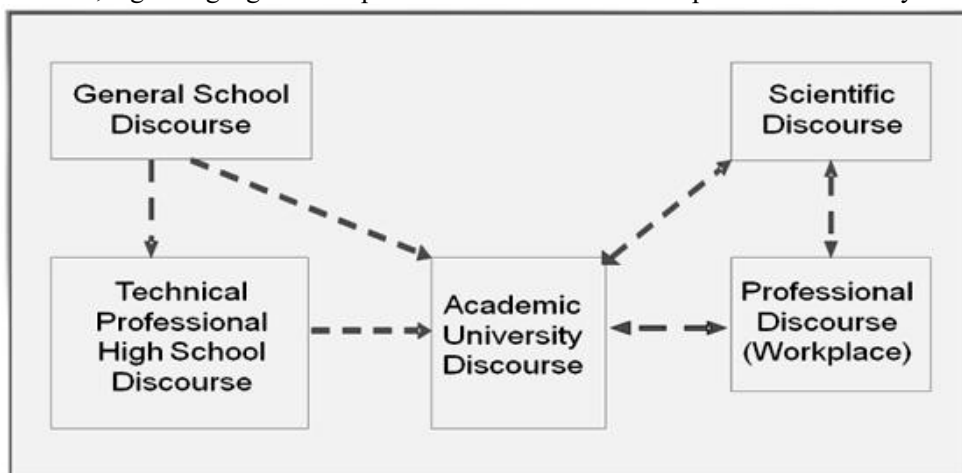


Figure 2 - Continuum of texts in academic and professional fields

### 1.3. Legal language lexical features

Characterised by Cao (2007: 21) a distinctive feature of legal language, legal discourse is a complex and unique aspect in translating legal texts.

As postulated by Danet (1984: 3), legal *vocabulary exhibits distinctive lexical features particular to expressing the concepts of law and*, as a consequence, it has been subjected to analysis in a number of studies. Thus, the author highlighted the following features as characteristic of the legal register:

- *technical terms*
- *common terms with uncommon meanings*
- *archaic expressions*
- *formal items*
- *unusual prepositional phrases*

Nevertheless, despite the efforts of simplification and *unfreezing* prominent theorists and researchers within the field of legal language feature this area of expertise by mentioning attributes like *formality, frozen, consultative* Danet (1984: 9). Consequently, key features of the legal register and style indicate concepts such as concreteness, conciseness, and clearness of intentions and actions, a special system of clichés and stamps which lack of emotional colouring. As a result, the frozen style of legal English is typically exemplified in its lexicon.

Based on theoretical arguments and practical analysis, the present section aims at proving that even though more and more people ask for the use of plain English in official documents, most of them exhibit the lexical features of archaic words, technical terms or use deliberate vague words.

#### 1.3.1. Formal words

Not everyone knows what initiate or *terminate* means, but virtually any speaker of English understands *begin* and *end*. The formal words like the former ones which are

rarely used in general English, are frequently used in legal language. Formal language is one of the traits of the legal lexicon. There are a lot of formal words, a small sampling of those would mention terms like: *approximately*, *commence*, *complete*, *construe*, *convene*, *employ*, *notify*, *present* etc.

***Transfer of days between fishing vessels flying the flag of different member states***

“Member States may permit the transfer of days present within the area for the same management period and within the area between any fishing vessels flying their flags provided that points 4.1. and 4.2. and 12 apply *mutatis mutandis*. Where Member States decide to authorise such a transfer, they shall *notify* the Commission, before the transfer takes place, of the details of the transfer, including the number of days to be transferred, the fishing effort and, where applicable, the fishing quotas relating thereto”. (REGULATION (EU) 2015/104:114)

“In light of the particular characteristics of air traffic in the Union, common competence standards for air traffic controllers employed by air navigation service providers should be introduced and effectively applied, ensuring air traffic management and air navigation services (ATM/ANS) to the public.” (REGULATION (EU) 2015-340:7)

One of the main purposes in using such words is to make legal documents to sound formal.

**1.3.2. Archaisms**

D. Crystal writes: “It is especially noticeable that any passage of Legal English is usually well studded with archaic words and phrases of a kind that could be used by no one else but lawyers” (Crystal 1969: 194) Such old-fashioned words are archaisms. Lawyers tend to believe that these archaisms enable clearer and less ambiguous reference and give greater weight and authority to the language. In legal language, the typical used archaisms are compound adverbs formed usually by adverbs, such as *here*, *there*, or *where*, to which prepositions, such as *after*, *at*, *by*, *from*, *in*, *of*, *to*, *under*, *upon* or *with* etc., have been suffixed. These words were common in medieval English. Rather than saying “*under it*” or “*under that*”, a speaker of Middle English could say “*hereunder*” or “*thereunder*”. And instead of using “*with what*” or “*with which*” in questions, Middle English speakers would generally say “*wherewith*”. In addition, legal English has retained several morphological forms that have died out in ordinary speech.

“Having regard to Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural or forestry vehicles (1), and in particular Article 22(4), Article 24(4), Article 25(2), (3), and (6), Article 27(1), Article 33(2), Article 34(3), Article 35(4), Article 45(2), Article 46(3) and Article 53(8)” there of REGULATION (EU) 2015-504:1

“Direct fishing of the species set out in Part A of Annex V, shall be prohibited in the zones and during the periods set out therein.”

For exploratory fisheries, the TACs and by-catch limits set out in Part B of Annex V, shall apply in the subareas set out therein”. (REGULATION (EU) 2015/104:117)

Such kind of words reflects the regular, solemn, conservative, rigid and authoritative style of contracts and the use of which can avoid the repetition and redundancy. One of the main justifications for continued use of antiquated vocabulary is

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that it is more precise than the modern equivalent. Using antiquated terminology bestows a sense of timelessness on the legal system, as something that has lasted through the centuries and is therefore deserving of great respect. And archaic language is considered more formal than everyday speech.

### 1.3.3. Loans or Borrowings

*Loans* represent the second linguistic layer of the legal vocabulary. Concerning borrowings of Latin root, Cao (2007: 58) considers that comprehension difficulties might appear as such words, even if they are similar linguistically; turn out to be different in legal substance. Accordingly, Cao (Ibid: 57) presents several examples of *common false friends* such as the word *demand* which is differently treated in English and French; in this respect, the word *domicile* in English, *domicile* in French and *Domizil* in German are differently rendered within the legal documents in these languages. In addition, examples of noun phrases such as *good faith* in English, *bona fides* in French and German are not entirely the same, as they are regarded by Cao as examples of linguistic equivalents but conceptually non-equivalents or partial equivalents in different languages.

*Transfer of days between fishing vessels flying the flag of different member states*

“Member States may permit the transfer of days present within the area for the same management period and within the area between any fishing vessels flying their flags provided that points 4.1. and 4.2. and 12 apply mutatis mutandis. Where Member States decide to authorise such a transfer, they shall notify the Commission, before the transfer takes place, of the details of the transfer, including the number of days to be transferred, the fishing effort and, where applicable, the fishing quotas relating thereto.” (REGULATION (EU) 2015/104:114)

### 1.3.4 Technical terms

Legal language contains a large number of words that are not used at all in ordinary speech.

In legal texts, technical terms are widely used such as: *defect, remedy, jurisdiction, damages* and/or *losses indemnities, tenancy*, etc. In the following example the underlined words are commonly used technical legal terms in contract English.

“This system and the results of the assessments shall be documented; (2) established a documented agreement with a qualified entity, approved by both parties at the appropriate management level, which clearly defines: (i) the tasks to be performed; (ii) the declarations, reports and records to be provided; (iii) the technical conditions to be met in performing such tasks; (iv) the related liability coverage; and (v) the protection given to information acquired in carrying out such tasks. (b) The competent authority shall ensure that the internal audit process and a safety risk management process required by ATCO. AR.B.001(a)(4) cover all certification or oversight tasks performed on its behalf”. (REGULATION (EU) 2015-504: 19)

In this excerpt there are 106 words, among which more than 25 words are technical terms. That can show us the frequent use of technical terms in legal documents.

According Cao (2007:10) such terms affect the meaning of the other lexical units used in connection with them, thus legal words have meanings only in the context of the existence of a legal system and only through particular rules of law. Under the

circumstance, we can emphasise that legal language provides a typical a lexicon which is constructed differently from that of the ordinary language, and involves terms that relate to each other in ways different from those of the ordinary language.

### 1.3.5 Common words with uncommon meanings

Words used on any occasion are called common words. In legal language, there are some common words used in specialized style, therefore they can be considered technical terms. In this situation, they are used not for their common meaning, but for their special sense. Thus, for example *prejudice* as a common word (noun), means an unfair and often unfavourable feeling or opinion formed without thinking deeply and clearly or without enough knowledge. But in legal language, *prejudice* means loss of any rights. In ordinary speech, *same* usually implies comparison to a similar object or person; that implication is lacking in the legal meaning, which refers to *the thing mentioned*.

According to the analysis of the proposed corpus there were encountered common words with uncommon meanings like: *action, article, award, consideration, party, satisfaction* etc.

“findings, corrective actions and date of action closure”. (REGULATION (EU) 2015-504: 36)

“Upon notification to the Commission by the Member State concerned, the Commission may endorse the outline of the intended quota transfer or exchange that the Member State has discussed with the relevant Contracting Party to the RFMO. Thereupon, the Commission shall exchange, without undue delay, the consent to be bound by such quota transfer or exchange with the relevant Contracting Party to the RFMO. The Commission shall then give notification of the agreed quota transfer or exchange to the secretariat of the RFMO in accordance with the rules of that organization”. (REGULATION (EU) 2015/104:15)

### 1.3.6. Deliberate use of vague words

According to Mellinkoff, the language of the law is sometimes characterized as one of extraordinary *precision*, and *unambiguous* (Mellinkoff 1994: 26). Precision is the driving force for the unique characteristics of legal English, which is critical to reducing the likelihood of misinterpretation. But precision is not necessarily extreme clarity—it may also involve selecting the appropriate level of vagueness or flexibility. Exactitude and completion are achieved by using both the accurate and vague words together.

According to the examples provided below we could argue that terms or expressions like *in a reasonable period of time* or by *technical regulations in force* are used by the contractual parties with the intent to make the contract more operative:

“(b) The competent authority shall ensure that the internal audit process and a safe tyrisk management process required by ATCO.AR.B. 001(a) (4) cover all certification or oversight tasks performed on its behalf”. (REGULATION (EU) 2015-504: 19)

“If the competent authority allocates tasks related to the initial certification or continuous oversight of persons or organisations subject to Regulation (EC) No 216/2008 and its implementing rules, they shall only be allocated to qualified entities.

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When allocating tasks, the competent authority shall ensure that it has:...” (REGULATION (EU) 2015-340: 85)

“(4) The authorities performing supervision and verification of compliance under this Regulation should be sufficiently independent from air traffic controllers when issuing licences or extending the validity of the endorsements, when suspending or revoking licences, ratings, endorsements or certificates in cases where the conditions for their issue are no longer met. Those authorities should also be sufficiently independent from air...” (REGULATION (EU) 2015-340: 1)

Based on the translation-oriented perspective postulated by Cao (2007:23) that “the nature of law and legal language contributes to the complexity and difficulty in legal translation, we further aim at highlighting particular features of legal language in terms of lexical and culture-bound particularities.

### 2.1. Legal language specific features and translation difficulties

Regarding the special occurrences and the difficulties translators may face when dealing with legal language texts, Cao (Ibidem) establishes a classification of various factors which influence and may even alter the quality of a legal translated document, even if the most appropriate translation strategies and procedures have been applied. In this respect, Cao refers to the difference between legal systems and laws arguing that even though legal language is a technical language *it is not a universal technical langue, but one that is tied to a national legal system.*

Within the same climate, it is worth mentioning that:

- a main factor that may imply translation difficulties is the difference between the two legal systems of the source and target language, this aspect being clearly emphasized by Trosborg (1991) as well.
- Still, it is not only the peculiar characteristics of each legal system which may lead to ambiguities, but the cultural differences as well. We could say that it is due to cultural differences that specific legal systems have been developed among different societies as *language and culture or social contexts are closely integrated and interdependent* (Cao 2007: 31). Trosborg (1991:78) highlights that law reflects society and that a legal system of a particular nation or a speech community is a reflection of its culture and its institutional traditions and regularities. Because of this close interaction between the legal system and the culture of a nation, legal translation between two languages becomes more difficult, the translator is assigned the tasks of *a mediator between two intercultural situations of communication* (Croitoru 1996: 212). This view is also supported by Cao (2007: 25) who states that law is an expression of the culture, which is expressed through legal language. Legal language, like any other language use, is a social practice and legal texts necessarily bear the imprint of such practice or organizational background.
- The third factor, and an essential one for our investigation, also mentioned by Cao (Ibidem), which can give rise to ambiguities in legal translation, is the linguistic dimension. At this point, Cao refers to two interrelated linguistic dimensions which can affect the translation process from a source text into a target text. Firstly, it is worth taking into consideration that legal language is an instance of LSP, thus encoding special syntactic, semantic and pragmatic rules (Sager 1990 in Cao 2007: 28). Trosborg

(1991: 66) states that *The acquisition of a special language happens through explicit rules which need common language for their introduction [...]*.

However, equal attention should be paid to the translators' competence and behaviour towards legal documents. In this respect, Cao (2007: 81) considers that often, *a translator has to make hard decisions within the constraints of language*. Admittedly, considering both the importance of the most appropriate translation strategies that have to be applied throughout a translation process and the translator's skills and competences in approaching legal texts we will further adopt the perspective put forward by Cao (2007) regarding the existence of translation difficulties that are likely to occur in legal documents translation. Being aware of the significance of all the previously defined factors that influence the translator during the translation process, we shall focus mainly on the lexical aspects that may generate ambiguities at various levels.

It is worth mentioning that our research is focused on both English and the Romanian translations, aiming to identify and analyse particular features of lexical and culture-bound particularities that may happen during the translation process, i.e. during the translation of English Regulations into Romanian.

By means of this investigation we first attempt to reveal those particular lexical and culture-specific issues that may occur during translating the source texts into the target texts. Accordingly, we shall to carry out a linguistic contrastive study of the findings in terms of qualitative and quantitative forms of lexical and culture-bound particularities in the translation of EU official documents, i.e. EU Regulations.

### Conclusions

To sum up we could envisage that lexical characteristics of legal language and moreover of EU official documents are to be emphasised by the very nature of this language variety as a branch of legal English

If analysing contracts' language lexical features synchronically, various characteristics are to be mentioned:

- thus, concerning compounding the analysis showed that this process is not quite productive, especially regarding compounds from adjectives, verbs and even adverbs;
- the most frequently encountered compounds belong to the class of nouns to which other words were attached;
- furthermore the undertaken analysis showed that the process of derivation is the most productive in contracts. Thus, derivation by suffixes has recorded the highest number of new word forms encountered within the analysed contract texts, around 250 derivatives, while prefixation only produced about 70 new word forms;
- further processes of word formation seem to be rarely used in contracts. Among other products of word formation which were encountered in contracts, though not so productive, were examples backformation and acronyms.

At the *lexical* level ambiguities seem to occur most frequently due to an ambivalent use of specific vocabulary items. Thus, by investigating both native and bilingual contracts we reached the conclusion that: **common words with uncommon meaning** are likely to cause lexical translation difficulties;

- **archaisms** and **loans** are the less frequently encountered examples of translation-related difficulties, especially due to the formal and strict norms of the contract style. However, borrowings have been encountered in our analysis; most of the loan items being instances of **Latin** and **French borrowings**, such as *quantum-cuquantum*



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which were is understood and used both by the drafters and the translators of the analysed texts. Some other examples of borrowings used in Romanian target texts, which regard more contemporary contract and business lexical items such as *joint venture* or *the format* (of the document) have also been properly transferred and used in the TT documents;

- in the case of synonyms, **legal terms** seem to produce most of the ambiguous examples encountered, mainly due to an ambiguous interpretation of such words during the translation process. The most frequently encountered instances of lexical ambiguity determined by **synonymous legal terms** are noun phrases or compound nouns containing words such as *law, lege; regulation, regulament, dispoziții; provision, măsură de precauție, prevedere; rule, normă, regulă*, which sometimes have been ambiguously interpreted and used interchangeably;

- in terms of *morphological* characteristics, we can state that **noun + noun compounds** are those ambiguous instances most frequently encountered both in source and target texts. While comparing source texts and target texts a further conclusion indicated that a high rate of **noun + noun compounds**, some of which ambiguous, have been transposed into the Romanian target texts mainly as **noun phrases**. Moreover, these target text **noun phrases** frequently display multiple interpretations, for example, *performance warranty – garanțiede bună execuție, quality terms, condiții calitative, remedy costs, costuri de remediere*.

We may conclude by stating that translation-related difficulties in terms of lexical and culture-specific issues do occur in legal language texts. Moreover, most translation-related difficulties do not occur due to translation errors, but rather due to the specific features of legal language which translators have to take into consideration, acting cautiously.

Needless to say those social, cultural and political factors also need to be taken into consideration when drafting or translating contracts.

### Authors' Contributions

The authors contributed equally to this work.

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- COMMISSION REGULATION (EU) 2015/340 of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 923/2012 and repealing Commission Regulation (EU) No 805/2011
- REGULAMENTUL (UE) 2015/340 AL COMISIEI din 20 februarie 2015 de stabilire a cerințelor tehnice și a procedurilor administrative referitoare la licențele și certificatele controlorilor de trafic aerian în conformitate cu Regulamentul (CE) nr. 216/2008 al Parlamentului European și al Consiliului, de modificare a Regulamentului de punere în aplicare (UE) nr. 923/2012 al Comisiei și de abrogare a Regulamentului (UE) nr. 805/2011 al Comisiei
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/504 of 11 March 2015 implementing Regulation (EU) No 167/2013 of the European Parliament and of the Council with regard to the administrative requirements for the approval and market surveillance of agricultural and forestry vehicles
- REGULAMENTUL DE PUNERE ÎN APLICARE (UE) 2015/504 AL COMISIEI din martie 2015 de punere în aplicare a Regulamentului (UE) nr. 167/2013 al Parlamentului European și al Consiliului privind cerințele administrative pentru omologarea și supravegherea pieței pentru vehicule agricole și forestiere.

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### Webography:

[www.europa.eu](http://www.europa.eu)

[http://ec.europa.eu/justice/contract/index\\_en.htm](http://ec.europa.eu/justice/contract/index_en.htm)

[www.consilium.europa.eu/uedocs/cmsUpload/TreatyconstitutingtheEuropeanCoalandSteelCommunity.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/TreatyconstitutingtheEuropeanCoalandSteelCommunity.pdf) - *Treaty constituting the European Coal and Steel Community*

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