Expanding Communication in Legal Matrix Vocabulary.
Legal English versus Legal Romanian

ONORINA BOTEZAT\textsuperscript{Ω}, GABRIELA SĂRBU\textsuperscript{Ω},
MIHNEA DRUMEĂ\textsuperscript{Ω}, ANA MARIA CHISEGA-NEGRLĂ\textsuperscript{β}
\textsuperscript{Ω}Spiru Haret University, \textsuperscript{β}“Carol I” National Defence University
Ion Ghica 13, Bucharest, ROMÂNIA
gabriela.sarbu@yahoo.com, anachisega@yahoo.com
www.spiruharet.ro

Abstract: - This paper emphasis on linking words usage in Legal English and the challenges of their translation into Romanian. Using a variety of linking words is important, as is ensuring that the flow of ideas in the writing is logical and easy for the reader to follow.

Key-Words: Expanding communication, Legal matrix vocabulary, Communication amplitude

1 Introduction
Nowadays, when everything is about communication, teaching foreign languages has regained its importance, its amplitude and its utility. Other source of the revitalization and reconsideration of the importance of foreign languages study represented the Common European Framework of Reference for languages that provided a basis for the mutual recognition of language qualifications, thus facilitating educational and occupational mobility. It is increasingly used in the reform of national curricula and sets up new certifications in English for Specific Purposes (ESP).

During the process of teaching foreign languages, English in our case, the didactic translation is used in class as a way of enriching linguistics skills and a good method of knowledge accumulation but also a method of testing different kinds of competences. A. Duff stresses out the three qualities the translation helps to improve when used in class, these are: accuracy, clarity and flexibility [1]. The student seeks for the best word and can make a right choice for its uses. This task becomes more difficult when it is applied for ESP.

The problems encountered in translating legal texts, which are categorized below, are specific to legal translation between the English and Romanian languages and legal systems. These problems are mostly encountered by students learning legal translation, in our case those at the department of Law and Public Administration.

2 General Features of Legal Language (Romanian and English)
The general features of legal language that will be discussed here apply both to English and Romanian legal languages. As Melinkoff has suggested, legalese is a way of preserving a professional monopoly by locking up the trade secrets in the safe of an unknown tongue [4]. On the other hand, as Tiersma suggests quoting from Sir Edward Coke, lawyers justify keeping the laws in an unknown tongue by pretending to protect the public [5]. Lawyers tend to defend their technical vocabulary as essential to communication within the profession, since they can easily understand each other using the special terminology. Studying law is in a large measure studying a highly technical and frequently archaic vocabulary and a professional argot.

Law is a profession of words. The general features of legal language that apply to both English and Romanian legal languages are the following:
It is different from ordinary language with respect to vocabulary and style.

The prominent feature of legal style is very long sentences. This predilection for lengthy sentences in both languages is due to the need to place all information on a particular topic in one complete unit in order to reduce the ambiguity that may arise if the conditions of a provision are placed in separate sentences. Another typical feature is joining together the words or phrases with the conjunctions and, or in English and şi, sau in Romanian. Tiersma suggests that these conjunctions are used five times as often in legal writing as in other prose styles (quoted in [1]).

Thirdly, there is abundant use of unusual sentence structures in both languages. The law is always phrased in an impersonal manner so as to address several audiences at once. For example, elementary courtroom etiquette, and indeed an absolute tradition in Supreme Court argument, requires counsel to first address the Court with the customary respectful opening of, May it please the Court, addressing the judge or judges in the third person, while in
Romania, lawyers address the court with Onorată Instanță.

Another feature is the flexible or vague language. Lawyers both try to be as precise as possible and use general, vague and flexible language. Flexible and abstract language is typical of constitutions which are ideally written to endure over time [5].

The features of legalese that create most problems are its technical vocabulary and archaic terminology. Both Romanian and English legal languages have retained words that have died out in ordinary speech. Historical factors and stylistic tradition explain the character of present-day English and Romanian legal languages. The factors influencing the evolution of legal language appear to be legal and historical, political and jurisprudential, in addition to the more usual types of historical and sociological factors that bring about change in ordinary language. Many old phrases and words can be traced back to Anglo-Saxon, old French, and Medieval Latin, while in Romanian they can be traced back to the Old Romanian words (arătare - „probă, „tocmire - convenţie), Latin, numerous Paleoslavonic terms (canon - pedeapsă fizică/ tortură). Archaic vocabulary and the grammar of authoritative older texts continue to influence contemporary legal language because documents such as statutes, constitutions, or judicial opinions are the main sources of law for the legal profession [5].

Legal language is conservative because reusing tried and proven phraseology is the safest course of action for lawyers. Archaic language is also authoritative, even sounds majestic in both languages. As Tiersma suggests using antiquated terminology bestows a sense of timelessness on the legal system as something ... deserving of great respect (quoted in [1]).

In both legal languages there are many words that have a legal meaning very different from their ordinary meanings. Tiersma calls the legal vocabulary that looks like ordinary language but which has a different meaning peculiar to law as legal homonyms [5]. This is one of the problematic features in translation.

There are also synonyms in legal languages of both Romanian and English, i.e., different words with the same meaning. One of the features of legal language which makes it difficult to understand and translate (for an ordinary translator/reader) of course is its unusual and technical vocabulary. Some of its vocabulary such as tortfeasor, estoppel in English and părăt (defendant) in Romanian, which do not even suggest a meaning to an ordinary person, is a complete mystery to non-lawyers.

Another feature of the English legal language is the modal verb shall. In ordinary English, shall typically expresses the future tense, while in English legal language shall does not indicate futurity, but it is employed to express a command or obligation [5]. However, in Romanian legal documents, the way of expressing legal obligation is using simple present tense.

3 Problems and difficulties encountered in translating Legal Texts between English and Romanian

Translation of legal texts (from English into Romanian and visa versa) poses problems closely related to both the nature of legal language and the specific features of both English and Romanian legal systems and languages.

3.1. Problems arising due to the differences in legal systems: The most daunting aspect of legal translation common to almost every language is the culture-specific quality of the texts. As Martin Weston suggests, the basic translation difficulty of overcoming conceptual differences between languages becomes particularly acute due to cultural and more specifically institutional reasons [6]. Newmark also suggests that a word denoting an object, an institution, or if such exists, a psychological characteristic peculiar to the source language culture is always more or less untranslatable (quoted in Weston [6]). The equivalence of an institution, a division, a concept, or a term may not be found in the target language - in our case, in Romanian. There are no words in Romanian to express some of the most elementary notions of British law. The words common law and equity are only two of the examples. There is no system of common law (sintagmă ce s-a încetat în limba juridic rumânesc, reprezentând sistemul Anglo-Saxon de drept, bazat pe lege nescrisă și jurisprudență) and equity in the Romanian legal system. Moreover how should we translate barrister (avocat pledant) or solicitor (consilier juridic, care are statut de avocat în Marea Britanie și are dreptul să pledze în instanțele inferioare - Magistrate Court/ County Court - primul grad de jurisdicție, corespunzător Judecătoriei în sistemul românesc de drept) into Romanian as there are no such job titles in the Romanian legal system. A Romanian legal translator overcomes the difficulty of translating a term or a concept which is absent in the target culture using the following methods:

3.1.1. Paraphrasing

This method is explaining the SL concept if it is unfamiliar to the target reader, when there is no equivalent institution or concept in the target culture.
and when a literal translation will make no sense. As we have mentioned above, the translation of barrister and solicitor is problematic, since in the Romanian legal system there are no such job titles. As we know, in the British legal system a barrister is a person who executes the legal case in courts, whereas solicitors are those who declare their opinions and recommendations to the parties in a lawsuit and who provide contact with the barrister. As a concept, barrister is more or less the formal equivalent of lawyer in Romania. To overcome the conceptual confusion, barrister is translated as avocat pledant, meaning the lawyer in court, whereas the solicitor is translated as avocat consultant which means the consultant lawyer. This is paraphrasing the concepts which are not shared both by the source and target cultures. Another concept, which commonly causes translation problems between different cultures, is Lord Chancellor. Since there is no House of Commons or House of Lords in the Romanian parliamentary system, these terms are also translated by paraphrasing. Lord Chancellor is translated as Președintele Camerei Lorzilor meaning the Head of the House of Lords. or, Lord Cancelar a literal translation, for those who understand clearly the term. Concepts peculiar to the Western legal and parliamentary systems are generally translated through paraphrasing.

3.1.2. Finding the Functional Equivalence
This is using a TL expression that is the nearest equivalent concept. Of course it is much more difficult to find the functional equivalent of a legal SL term where the legal institutions of two cultures do not have much in common. To quote an example that is problematic mostly for translators between English and French: Solicitor (which is used for the French notaire) has the Romanian functional equivalent of notary. Moreover, the generally used Romanian functional equivalent of solicitor is avocat which is the literal translation of lawyer. Both court and tribunal are translated as instanţă which is the literal translation of court. Translation of tribunal as tribunal is rendering the functional equivalent of it. Using this method frequently leaves the translator short of terminology due to the different structures of the legal systems of the Romanian and British cultures.

3.1.3. Word-for-Word (Literal) Translation
This is translating lexical word for lexical word, and making adjustments of prepositions, endings, and other grammatical features if necessary. For example, Protection Court is translated directly as Instanţă de protecţie (Protecţie-Protection and Instanţă-Court) while the words change place so as to ensure the correct syntactic arrangement in Romanian. On the other hand, when the source text is in Romanian, and when it is translated into English, it makes a difference whether the target text is directed to American or English culture, because the terms and institutions of different cultures using the same language may be different. For example, a prison in the British System is a penitentiary in the American system, while they are both translation in Romanian, închisoare, respectively penitenciar. A Magistrate's Court in the British legal system is Civil Court of Peace in the American legal system, and they are both translated as Judecătorie into Romanian. Attorney and Sheriff do not have simple translated equivalents in UK English and other languages [1]. Each legal system is situated within a complex social and political framework which responds to the history, uses and habits of a particular group. This complex framework is seldom identical from one country to another, even though the origins of the respective legal systems may have points in common. The diversity of legal systems makes research in the field of legal terminology more difficult because a particular concept in a legal system may have no counterpart in other systems. Sometimes, a particular concept may exist in two different systems and refer to different realities, which raise the problem of documentation and legal lexicography. Legal translation implies both a comparative study of the different legal systems and an awareness of the problems created by the absence of equivalents. Translation is much more than the substitution of lexical and grammatical elements between two languages. Often the process of translation requires the art of leaving aside some of the linguistic elements of the source text to find an expressive identity among the elements of the source and the target texts. In legal translation, a problem arises from the very beginning if the translator aims at finding the exact terminological equivalent. The attribution of an equivalence to a legal term, for which no comparable concept exists in another legal system, can be the cause of ambiguities, confusion and all types of miscomprehension due to the effect the term in question produces in the reader of the translated text. Therefore, the difficulty of terminological equivalence in legal translation is reflected, above all, in the expectations of the reader from the translated text. In most cases, legal texts do not lend themselves to precise translation, unlike the case of a scientific article. In this respect, legal concepts, terminology and realities of one society only
correspond partially to those of another, that is to say, certain concepts may totally coincide, while others may only partially do so. As a result, in the field of legal translation, the major practical difficulty is that of deciding whether a concept is the same in two languages or whether it is different in terms of the consequences which ensue.

Register is a technical term used in linguistics to refer to the language we use in situations. In one day you will use and move between a numbers of registers of Standard English, depending on where you are and who are talking or writing to. You will use different language to your child, your partner, your law lecturer, your employer, your best friend, your clients, the judge, and your colleagues. As a barrister you will use different language with your colleagues in court from that you would use with them in chambers or over lunch. You adapt your standard language to suit each occasion and to reflect the kind of relationship you have with your audience.

Occupations and activities have their own specialized language registers. Thus, rugby players participate in loose mauls, rucks and turnovers. Linguists discuss syntax and register. And lawyers? For the purposes of the aforesaid it is submitted that the said professionals may be in flagrante delicto hereunder. Res ipsa loquitur. As this example demonstrates, we are not talking only about vocabulary. Grammatical structure also changes between registers. A register may also contain slang. Police officers may talk of sending out the yobbo van, and teachers in higher education may refer to resource-based-learning as fo-fo (unabbreviated form unprintable).

Legal English sentences. Besides being long and complex, legal sentences are self-contained. This means they stand on their own; neither linked to what precedes or follows them. This is necessary because each action or requirement is dependent on a series of conditions which must be fulfilled before it can happen.

In standard written English ideas are linked by logical progression and the use of linking words and phrases. This gives coherence to a text.

By treating each sentence as a separate item, legal ideas are isolated from each other. The writing is disjoined and may read like a list. Documents therefore seem to lack coherence. The reader has to struggle to make connections between items and their place in the text as a whole, as well as put up with unnecessary repetition.

In fact, legal documents are coherent, in a way which is closely linked to their purpose. They are written records which lawyers use for reference.

This means that, for example, readers will not normally scan a new piece of legislation to get a rough overview – they can get this from journals and commentaries. They will scan to find out which sections of the document are likely to give them the answers they want to specific questions, and then take time to study those parts in detail. This process is easier if section is set out separately from every other.

The general rule in English is that a simple declarative sentence should be structures Subject-Verb-object. For example:

*The lawyer drafted the contract.*

In this sentence, the *lawyer* is the subject, *drafted* is the verb, and *contract* is the object.

The subject is the part of the sentence that usually comes first on which the rest of the sentence is predicated. It is typically – but not always – a noun phrase. In traditional grammar it is said to be the doer of the verbal action. A subject is essential in English sentence structure – so much so that a dummy subject (usually it) must sometimes be introduced (e.g. *It is raining*). However, they are unnecessary in imperative sentences (e.g. *Listen!*), and in some informal contexts (e.g. *See you soon*).

Verbs are traditionally described as doing words. They are usually essential to clause structure. Verbs may be classified either as main or auxiliary. Auxiliary verbs are traditionally described as helping verbs, and include *be, do and have*.

The object is usually a noun phrase. In a simple declarative sentence it follows the verb. The object is usually said to be affected by the verb. As in: *The lawyer drank a cup of coffee*.

If in everyday writing and speech the subject appears at or near the beginning of the sentence, followed closely by its verb, legal drafters, however, put words, phrases and clauses in unusual positions. The usual underlying logical structure of a legal sentence is:

If (or when) X, then Y shall be Z, or Y shall do Z. X is a set of conditions or circumstances: if? when? where?;

Y is the agent: who?;

Z is the state or action: what?

This structure is sometimes known as a legislative sentence, or legislative thought. Here is an example:

If the work is cancelled by the customer, (X) the contractor (Y) is entitled to make the following charges...

(Z) Normal English word order would be Y, Z, X. Why the difference? In Legal sentences the X component often appears at the beginning of the sentence to enable the reader to discover early on
whether she is interested in this provision or not. If not, she is spared the agony of having to read on! If she is unfortunate enough to have to struggle on, by the end she may well have been floored by a monstrous and nightmarish sentence which spawns vast strings of embedded clauses and phrases. These overwhelm the subject of the sentence and swallow up part of its verb. She may hunt in vain, but won’t find the verb until it is disgorged many lines further on.

In more complex sentences, it may be necessary to introduce other parts of speech. These include: adjectives – adjectives go before the nouns they qualify, for example: The commercial lawyer drafted the sales contract; adverbs – they may be added to modify the meaning of our example: The commercial lawyer efficiently drafted the sales contract; linking clauses - they help linking clauses together.

One way of achieving this is by using prepositions: In, at, on, to, from, etc or conjunctions: and, or, but, since, when, because, although, etc.

Using the same example, we can add: The commercial lawyer efficiently drafted the sales contract for the company, but the client requested various amendments and additions.

In addition, relative pronouns: who, whom, whose, which, that provide a convenient means of linking sentences together.

When writing in English, lawyers use discourse markers to show how different ideas interrelate. These usually appear at the beginning of sentences and they indicate to the reader the way in which he or she should treat the information or ideas given in the sentence. They provide an essential means of orientating the reader and assisting his or her comprehension of the text.

In practice, since there are only a limited number of language functions that are typically required in legal discourse, a small handful of words and phrases will cover situations that a lawyer might expect to encounter in the course of daily working life.

Examples: In the event that a trademark owner wishes to allow others to use the trademark, he or she must inform the Registrar.

Here, the opening word of the second sentence – however – indicates a qualification to the previous statement.

Example: Of course, if information is already in the public domain, it will no longer be regarded as confidential.

The opening phrase of course in this sentence indicates an assumption. The writer uses this technique to indicate to the reader that the idea conveyed in the rest of the sentence is generally accepted.

Example: Therefore, in such circumstances a confidentiality agreement covering such information will be ineffective.

In this sentence, the opening word therefore indicates a logical step or deduction based on the information provided in the previous sentence.

The table below sets out some of the more common functions for which discourse markers are used (on the left) and some suggested words or phrases for those functions (on the right).

<table>
<thead>
<tr>
<th>Function</th>
<th>Suggested word or phrase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referring to the past</td>
<td>Formerly</td>
</tr>
<tr>
<td>Expanding on a point</td>
<td>Besides, furthermore</td>
</tr>
<tr>
<td>Contrasting</td>
<td>On the other hand, conversely</td>
</tr>
<tr>
<td>Summarizing</td>
<td>In short, in summary, by way of précis</td>
</tr>
<tr>
<td>Drawing a conclusion or inference</td>
<td>As a consequence, consequently, as a result</td>
</tr>
<tr>
<td>Giving an example</td>
<td>For instance, for example</td>
</tr>
<tr>
<td>Emphasizing</td>
<td>In particular, especially, it should be stressed that</td>
</tr>
<tr>
<td>Qualifying</td>
<td>However, it should also be borne in mind that</td>
</tr>
<tr>
<td>Making a logical step in the argument</td>
<td>Therefore, thus, it follows that in particular</td>
</tr>
<tr>
<td>Beginning</td>
<td>Firstly, to begin with</td>
</tr>
<tr>
<td>Making an assumption</td>
<td>Of course, naturally, clearly, evidently</td>
</tr>
<tr>
<td>Referring to a new issue</td>
<td>Turning to, with reference to, with respect to, with regard to, regarding</td>
</tr>
<tr>
<td>Hypothesizing</td>
<td>In the event that, if</td>
</tr>
<tr>
<td>Bearing a factor in mind</td>
<td>Given that, bearing in mind that, considering that</td>
</tr>
<tr>
<td>Stating an exemption</td>
<td>Except, with the exception of, save for, save as to</td>
</tr>
</tbody>
</table>
4 Conclusion
While lawyers cannot expect translators to produce parallel texts that are identical in meaning, they do expect them to produce parallel text that are identical in their legal effect. Thus the translator's main task is to create a text that will produce the same legal effect in practice. To do so, 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 [1]. Translators must be able to use legal language effectively to express legal concepts in order to achieve the desired effect. They must be familiar with the conventional rules and styles of legal texts in every field of the individual legal systems. A legal translator must not forget that even a Will is not valid if not written in the correct style.

References: