

On the characteristics and translation strategies of long sentences in legal English

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Abstract

Legal English translation starts late in China as a whole. Although translations of legal documents are among the oldest and the most important translations all over the world, legal translation has long been attributed with low profile in both translation and legal studies. For over 2000 years, in the west general translation studies were dominated by the debate whether a translation should be literal or free. Also, study on legal English has been mainly on lexical expressions since modern times in China. More and more works on the translation of legal words and texts appear on Translation in China. However, sentence is the core of legal text understanding, which often confuses most legal English learners. With regard to the rare study on long sentences in legal English at home and abroad, the thesis probes into long sentences translation in legal English. There are three parts in this paper. The first part expounds features of legal English and the criteria of legal translation including precision, consistency and identity, clarity. The second part analyzes features of long sentences in legal English in detail. Based on these, the last part puts forward strategies for long sentences involving inversion, division, analysis of different legal texts, application of different legal contexts, a good understanding of grammaticalization of legal English.

Keywords: legal text, translation, long sentences

1. Introduction

Nowadays, with the advancement of globalization, interactive activities between China and other countries are increasingly carried out and China actively takes part in various world activities, which make legal English more and more important and necessary. Concerns for legal English translation have been mainly on lexical expressions for many years, whereas research in syntactic structure remains rare. In legal English, there exist a large number of long sentences baffling many scholars. Only by accurately analyzing these long sentences and further correctly translating them can we engage in legal English translation with ease.

The present paper attempts to pile out the historical vacancy, and the thesis makes a rigorous analysis on translation of long sentences in legal English, which makes great influences on foreign law study and legal translation. At first, the thesis introduces features of legal English and principles of legal translation which help us to get a general impression on legal English. In the following part, the paper focuses on features of long sentences in legal English. Based on unique features of long sentences in legal English, the last part puts forward strategies for translating different types of long sentences in legal English, which makes it easy for people to study legal documents.

The purpose of this paper is not only to help people to get a deep knowledge of long sentences in legal English but also arouse scholars' interest in long sentences translation in legal English. Facing with globalization, we have no choice but to enrich ourselves with more legal English to devote our whole life to the noble cause of serving people and the country heart and soul.

1. Features of Legal English and Its Translation Criteria

In order to better understand legal English and translation strategies of long sentences in legal English, this chapter

illustrates features of legal English and how legal English translation differs from other kinds of translations and criteria of legal English.

1.1 Features of Legal English

Legal English is the style of English used by lawyers and other legal professionals in the course of their work. It has particular relevance when applied to legal writing and the drafting of written material, including: Legal documents, court pleadings, laws and correspondence.

As noted above, legal English differs from Standard English in a number of ways. The most important differences are of three aspects:

Firstly, common law is the basis of modern legal English which is based upon Roman law written in Latin. So it is rarely strange to see many Latin words in legal English. Since law becomes an important part of people' lives, Latinisms in legal English have gained recognition. Among hundreds of Latin phrases in legal English, the most often used are: *alias*, *bona fide*, *alibi*, *proviso*, *in rem*, *inter alia*, *quorum*, etc.

Moreover, having been dominated by France for long time, legal English abounds in French or Norman terms consisting of basic legal English words. Here are some examples: *action*, *court*, *lien*, *plaintiff*, *pledge*, *tort*, *alien*, etc.

Last but not the least, in legal English there are a great number of compound adverbs based on simple deictics such as: *here*, *there*, *where* and so on which means the document under discussion and prepositional phrases to reach solemn tone. Common examples include the following: *aforsaid*, *forthwith*, *hereafter*, *herein*, *let*, *pursuant to*, *thereabout*, *whereas*, *subject to*, *notwithstanding*, *without prejudice to*, etc.

1.2 Criteria of Legal Translation

While translating, we should observe a set of rules.

However, due to the high standard of seriousness and tightness of legal documents, Legal English translation should embody the authority of legal documents and adhere to translation rules like some other English literary forms. Generally speaking, legal English translation involves two stages: accurate understanding and smooth expressiveness. The first stage means that one should understand the text accurately, then find the central element of the sentence and further analyze how many kinds of meaning the sentence includes.

In the second stage, in accordance with people's customs and habits of the target language, one organizes the sentence meticulously and accurately to show the target language. Besides, we should learn from the predecessors' translation theories in the translation field while doing legal English translation.

A lot of related studies have been conducted both at home and abroad. At home in 2001 Song Lei put: Generally speaking, legal translation is not only a general term conversion, but also includes legal term and interlingual translation. Zhu Chuding (2002) also pointed out legal English translation rules, that is "translation should involve language functional equivalence and legal functional equivalence." Also, the distinguished linguist Yan Fu put forward "Faithfulness, Expressiveness and Elegance". Fu Lei supported "Resemblance in spirit rather than resemblance in form." Lin Yutang proposed "Faithfulness, Expressiveness and Beautification." Qian Zhongshu raised "Sublimity".

In the west the most famous is that in 1991 Douglas Robinson interpreted and demonstrated "Translation is the original author and the target readers' two-way translation theory" (WILSS.W 2001). The German scholar Wales also thought that translation is a modern way of communication. The modern European linguist Chomsky put forward Generative Grammar, underlining that "The deep structure of the sentence is not equal to the sum of the surface structure."

As a matter of fact, theories raised by scholars at home and abroad all have their merits. It would be perfect if both could be combined. Since legal document is concise and comprehensive, we could translate well only by understanding the deep meaning. On the whole, method for common long English sentence translation also applies to the translation of long sentence in legal English which involves more legal norms and standard legal language.

The following is an overview of some of the main criteria of legal English:

1.2.1 Precision

Steiner once put it: "The lawyer must be more precise in his writing than almost anyone else. Most writers can expect their work to be read in good faith, that is, with an honest desire to understand what was meant. But the lawyer must write in constant fear of what we might call the reader in bad faith, the man looking for loopholes in the contract so as to avoid liability for his failure to perform, the disappointed heir who wants the will read in a way that would defeat the testator's intention, the criminal defendant who wants the statute interpreted so as not to cover his act, and all the others who will want to twist the meaning of words for their

own ends." That is what we need is not only accuracy but also precision in the process of doing legal translation, otherwise some criminals will get loopholes and destroy social stability.

Example 1

……所有董事会成员……须由合营方委派和撤换。

……all the directors shall be appointed and replaced by the parties to the venture.

It seems that the translation is perfect if we use the criterion of "faithfulness" or "accuracy". However, as a matter of fact, the above version is not precise. "撤换" means "removed" or "ousted", but it is translated into "replaced" which has the only meaning of "替换". So the above translation loses precision.

Example 2

如果买方对品质有异议，可以在货到目的口岸或收货后30天内向卖方提出索赔。

In case the Buyers have disputes over the quality of the goods, the Buyers may, within 30 days after arrival at the destination port or delivery of goods, file a claim against the Sellers. (Dong, 1997) ^[2]

In common with the first example, this one also appears accurate and smooth. But once we carefully probe into it, we will find several problems. "Delivery" has the meaning of "carrying" and "shipping", but it is a common sense to buyers and sellers that it takes months for goods to arrive at the port, which implies that the Buyers can't check goods before it arrives, let alone filing a claim. Then the precise phrase should be "take delivery" in according with "收货".

Specifically, only by translating legal documents can we avoid more crimes and build a harmonious society.

1.2.2 Consistency and Identity

In other works the use of synonyms to express the same meaning is considered to be an active style, which can only be mastered by those accomplished scholars. But in legal English translation it is unadvisable even to choose near-synonyms to convey the same legal concept. Consistency refers to the use of the same word and identity requires the constant consistency of the key words. The following example best illustrates this point.

Example

For the purpose of this part-

An instrument is false if it purports to have been- (i) Made in the form in which it is made by a person who did not in fact make it that form; (ii) Made in the form in which it is made on the authority of a person who did not in fact authorize its making in that form; (iii) Made in terms in which it is made by a person who did not in fact make it in those forms; (iv) Made in terms in which it is made on the authority of a person who did not in fact authorize its making on those terms; (v) Altered in any respect by a person who did not in fact alter it in that respect; (vi) Altered in any respect on the authority of any person who did not in fact authorize its alteration in that respect...

就本部而言——

(a) 任何文书如有以下情况，即属虚假——(i)

该文书是以某种式样制成，并且看起来是由某人以该式样制成，但事实上该人并无以该式样制作该文书；(ii)

该文书是以某种式样制成，并看起来是获某人授权以该式样制造，但事实上该人并无授权以该式样制造该文书；(iii)

该文书是按某些条款制造，但事实上该人并无按该等条款制造该文书；(iv)

该文书是按某些条款制成，并看起来是获某人授权按该等条款制造，但事实上该人并无授权按该等条款制造该文书；(v)

该文书开来曾由某人在某些方面予以更改，但事实上该人并无授权在该方面予以更改；(vi)

该文书看来事获某人授权在某方面予以更改，但事实上该人并无在谋反方面予以更改.....(Don g, 1997) [2]

As the above translation shows, “instrument” is translated into “文书”, “made” into “制成” and “a person” into “某人”, which remain consistent in the whole translation process. Therefore, “consistency” and “identity” are the internal prerequisite of legal documents.

1.2.3 Clarity

Legal language of every country is the most standard language in that country. In principle, it is the most important characteristic of legal language using clear words to express legal concepts. People have the right to be informed in language which they can understand, of benefits to which they are entitled, and obligations which are imposed on them. This is only fair. It is part of rule of law. The following is a legal provision lacking clarity.

Example

The servant’s liability stems from the duty owed to a third person under the law to conduct HIMSELF so as not to injure others.

In this sentence is “HIMSELF” refers to “the servant” or “a third person”. If there is legal dispute, it must be owed to the word “HIMSELF”. There will not be any different meanings if it is changed into “The servant’s liability stems from the duty owed to a third person under the law requiring the SERVANT to act so as not to injure others”.

2. Features of Long Sentences in Legal English

Long sentences in legal English have not only subject predicate structure, but also many modifiers, such as clauses and phrases. The complex relationship is connected by various connectors to show its exactness. This chapter will talk about features of long sentences in legal English from three aspects

2.1 Use of Logical Connectors

There are a great number of logical connectors, such as casual connectives, coordinating conjunction and adversative conjunction, etc. In legal English, the most often used connectors are: coordinating conjunction and adversative conjunction, such as “and”, “or”. Logical connectors play an important role in long composite sentences of legal English. “And” is a coordinating conjunction, meaning“并且”. “Or” is a adversative conjunction, meaning “或者”. In legal document, a scholar uses the following formulas to express the function of “and”, “or” in legal English.

1. If X does A, B and C, X shall be liable to punishment.
2. If X does A, B or C, X shall be liable to punishment. (Sarcevic,S, 1997) [6]

In formula (1), only if A, B, C all are performed, X shall be punished. But from formula (2) we know that the use of transitional connector “or” means that if any of A, B, C is performed, X will be punished according to the law. So it will not be hard to think that what the result will be serious if a translator misuses “and”, “or”.

Example:

An employee's material liability shall be excluded if the damage was caused as a result of force manure circumstances, normal economic risk, extreme necessity, or necessary defense.

如果是雇员由于特殊情况,正常的经济风险,极其必要性或者必要防卫,从而对雇主造成损失,雇员不需承担经济责任。(Du, 2004) [3]

In the above example, the use of transitional connector “or” means the employee will not bear economic losses as long as one of the conditions is met. But if we substitute “and” for “or”, there is no doubt that it will be a little difficult for the employee not to bear economical losses.

2.2 Use of Modified Components

In common English, modified components include participial structure, infinitive, the possessive case of nouns and various clauses and preposition structures. “In legal English, nouns often follow one or more than one defined composition modification, and each qualifying components are placed closely behind the word modified” (Sarcevic, S 1997) [6]. To legal English drafting panel and translators, they should put everything into one sentence as can as possible, which accordingly makes the sentence complicated and translation difficult, but in the meantime the expressiveness of the related terms become clearer and more comprehensive.

Example

In the event of the loss of the breadwinner, a pension shall be awarded to incapable family members of the deceased breadwinner as a result of a work-related injury or illness irrespective of his length of service, and if the death was caused by other reasons - subject to the relevant total length of service, which shall depend on the age of the insured employee at the time of his death.

如果负担家计的员工已经死亡,且员工是因工负伤或者跟

工作相关的疾病而死亡,那么不须考虑其工龄,雇主都应将抚恤金授予死者的无工作能力的家庭成员;但如果死亡是其他原因导致的,抚恤金的发放则要受到死者的总工龄的影响,其工龄的计算取决于参保职工死亡时的年龄。(Du, 2004^[3])

In the example the stem parts of the sentence are “a pension shall be awarded”, the rest are modified qualified components. The law legislator should not only consider all situations concerned with a pension but also think accurately put many modified qualified components into one sentence, which needs taking great pains. It also reflects the complexity of legal English.

2.3 Use of Conjunctions

In terms of conjunctions, “subject to”, “provided (that)”, “unless”, “in the event of (that)”, “in case of (that)”, “where”, “whereas” and “notwithstanding” are frequently used.

Example:

Where a claimant has a claim which exceeds the monetary amount mentioned in the Schedule and which, but for the excess, would be within the jurisdiction of the Board, the claimant may abandon the excess, and thereupon the Board shall have jurisdiction to inquire into, hear and determine the claim. (Cap. Law of Hong Kong)

Apart from the above features, the long sentences of legal English are usually abundant in symbols of morphology, enabling readers to identify the main clauses and subordinate clauses. Also there are enumerations of adjectives, nouns and verbs, etc.

3. Strategies for Long Sentences in Legal English

When translating long sentences in legal English, we should study those sentences from the whole view and sometimes even convert the order of the sentence and structure with Chinese accurately expressing the meaning. “Legal English translation should not only be language functional equivalence but also embody legal functional equivalence.” (Zhang Fulin 1998) Legal English is solemn and rigid. Generally speaking, we can adopt the common methods used in long sentences of ordinary English, which includes inversion, division, sequential method and synthetic method, etc. In addition, since long sentences in legal English are different from those of common English, several unique methods should be adopted when translating long sentences of legal English: analysis of different legal texts, application of different legal texts and a good understanding of grammaticalization of legal English.

3.1 Inversion

Inversion refers to the reversal of the normal order of words, which is popular in translation no matter what types of texts or sentences, it is no exception in long sentences of legal English

Example 1:

Similarly the fact that an attorney has found the contract upon which the suit is brought, does not make the contract itself part of the attorney’s work product.

同一理由, 律师发现作为诉讼根据的合同的这一事实,

不能使合同本身成为律师工作成果的组成部分。(Guo, 2008)

This is an obvious example of inversion which firstly translates “upon which the suit is brought” into “作为诉讼根据的” and then converts “the fact that.....” into “律师发现合同的这一事实”. It accords with the habit of Chinese expression.

There exist a vast number of adverbial clauses of condition in legal English, such as clauses led by “provided that...”, “in case...”, “whereas...”, “as long as...”, “unless...”, “if...”, “supposing.....”. In ordinary English adverbial clauses could be in the beginning, at the middle or end of the sentence, whereas in legal English adverbial clauses should be at the beginning and the main clauses in the end. “Legal rules consist of hypothetical condition, behavior corpus, and take the consequence.” (Yu Fang 2006) Hypothetical condition refers to cases that could happen in society. Once happening, the behavior corpus should bear the legal consequence. In legal norms there are a great number of adverbial clauses, which is rarely seen in other English works.

Example 2:

In the event of the loss of the breadwinner, a pension shall be result of a work-related injury or illness irrespective of his length of service, and if the death was caused by other reasons - subject to the relevant total length of service, which shall depend on the age of the insured employee at the time of his death.

如果负担家计的员工已经死亡,员工是因工负伤或者跟工作相关的疾病而死亡,不须考虑其工龄,雇主都应将抚恤金授予死者的无工作能力的家庭成员,而如果死亡是其他原因导致的,抚恤金的发放则要受到死者的总工龄的影响,工龄的计算取决于参保职工死亡时的年龄。(Liu, 2007^[5])

In the above English-Chinese translation, clauses of condition are used twice, that is “in the event of...” and “if...”, referring to predefining and presupposing condition and prescribing the person’s right and obligation. In the meantime, from the sentence of “in the event of the death, then shall depend on” we can conclude two basic clauses of condition: “In the event of A, then B shall be C” or “In the event of A, then B shall do C.” (Liu Qian 2007)^[5] The main components of the sentence are: a pension shall be awarded. The rest are the situation in which a pension will be awarded. There are two levels of meanings in this sentence. If we just translate it according to the original order and put the party’s right and obligation ahead, but the clause of condition behind. That

is:如果负担家计的员工已经死亡,雇主都应将抚恤金授予死者的无工作能力的家庭成员,如果员工是因公负伤或其他跟工作相关的疾病而死亡,不须考虑其工龄,而抚恤金的发放则要受到死者的总工龄的影响,工龄的计算取决于参保职工死亡时的年龄,如果死亡是其他原因导致的.

This kind of translation not only accord with Chinese habit but also seriously destroys legal English norms. So we adopt

conversion translation with the condition before the result. Only by mastering the law of clauses of condition and differentiate the main clause and the subordinate clause, then convert the order of the sentence can we reach accurateness and strictness.

In legal English document the constant use of restrictive attributive clause is to define and modify noun to provide rules about citizens' rights and obligations, making legal terms more accurate and clearer and eliminating misunderstanding.

Example 3

A list of subdivisions shall be established in the same procedure for enterprises where in the event of the joint execution of work by employees who work directly with monetary or commodity valuables, collective (team) material liability may be introduced.

如果员工是直接与贵重物品或商品接触的,并且他们的工作方式是共同执行,那么应该按照企业的相同程序确立部门的名单,同时部门也会引进集体(团队)经济责任制。(Sun, 2003^[10])

This example uses two restrictive attributive clauses: where in the event of the joint execution of work by employees, and who work directly with monetary or commodity valuables, collective material liability. This restrictive attributive clause is translated into main clause. If we translate it like this“那些直接与贵重物品或商品接触的工作方式是共同执行的员工”,it may seem right, but language not that rigorous and not up to the demand of legal language. The original structure is complicate but we prefer to short sentence clause rather than long sentence. Legal English grape type structure clearly defines a list of subdivisions in the same procedure. Though the sentence is complex, the meaning is clear. This sentence has two level of meanings:1,那么应该按照企业的相同程序确立部门的名单,同时部门也会引进集体(团队)经济责任制;2,如果员工是直接与贵重物品或商品接触的,并且他们的工作方式是共同. According to Chinese habit and the rigorousness of legal language, we adopt inversion to translate it.

3.2 Division

When confronted with long sentences in English or Chinese texts, division is adopted to make the sentences easier to understand.

Example:

American of today. Such things have been driving us fast to an administrative justice through boards and commissions, with loosely defined powers, unlimited discretion and inadequate judicial restraints, which is at variance with the genius of legal and political institutions.

当今美国,新的情况迫使我们尽快通过各种委员会,以不明确的授权,未加限制的自由裁量,不充分的司法控制来实现司法职能。尽管这并不符合我们法律与政治制度的精神。(Wang, 2006)

There exist several phrases and one clause in the above long sentence, making it difficult to directly convert the sentence into one sentence in Chinese, so while translating division is

adopted to present the same meaning in several short sentences.

3.3 Analysis of Legal Text Types

There are various types of legal texts including operative documents, expository documents, operative documents, thus translators should not ignore the types of legal texts. If not, he not only disobeys the rules of legal English but also those of common English. The same word may have different meanings in different legal texts. For example, “consideration” is “对价·约因” in operative documents while meaning“考虑,考量” in expository documents. “Principal” refers to “委托人” in legal documents and “本金” in contracts and “被代理人” in correspondences.

Since words in legal English are polysemous, translators can presuppose one certain meaning of the word to decrease obstacles of translating.

3.4 Application of Different Legal Contexts

Legal English is the language used in common law system, therefore it is important to apply legal contexts to legal translation. Legal contexts can be divided into linguistic context and interlinguistic context. And long sentences in legal English are linguistic context. Linguistic contexts include words, phases, and additional components. From the level of words, meanings of legal words are different from common words. For example “house” means “商业机构·商号,证券交易所”.

Collocation, comparison context and interactive context are the most ordinary legal linguistic contexts. Collocation is more important in legal English translation than other literary works. Such as “baby act” in common English is translated into “幼稚的举动”, but this phrase means “以合同缔结人未成年为由的抗辩” in legal contexts in which baby equals to minor or child that is “未成年”. “Act” not only has the meaning of “法令,法案,条例” but also embodies “学位论文答辩”. Therefore it is not strange to see this collocation and its unique translation in legal English.

Another case in point is: Choses in action were, before the Judicature Acts, either legal or equitable. In this sentence legal and equitable comprise comparison context and legal losses its original meaning of “法律的,法定的” but has the special meaning of “普通法的”.

As to interactive context, right and interest, damage and injury are typical examples.

3.5 A Good Understanding of Grammaticalization of Legal English

With the advancement of legal language, it forms special structures: grammaticalization. It is a key to understand grammaticalization of different legal texts during the process of translating long sentences of legal English.

Such common fixed structures are as follows: including but not limited to.....包括但并不限于; without prejudice to.....在不损害...的原则下; unless otherwise provided for herein 本合同另有规定的除外; shall not be construed as.....不得解释为; in considering that.....鉴于...;without

prior written approval.....未经书面批准...

Example

If Buyer furnishes proof to Seller that Buyer can purchase from a manufacturer in any contract year any of the aforesaid materials produced within the United States, of the same quality, upon similar terms and conditions, in approximately the same quantity as the then undelivered quantity hereunder during such contract year, and at a lower price than is then in effect under this Agreement, then if Seller shall not reduce the price hereunder to such a lower price for the aforesaid quantity, Buyer may purchase such quantity from the other manufacturer, whereupon Buyer's commitment under this Agreement shall be reduced by the quantity so purchased.

In terms of legal text the above example belongs to sales contract terms. With regard to legal contexts, it involves (A)collocation: of the same quality(of: “具有某性质”),the then(then is an adjective, meaning“当时的”), and “during such contract year”(“such” means “the same”); (B)comparison context: this Agreement(its ordinary meaning is “本协议”, but this example is sales contract terms and the original meaning is changed into “本合同”)and commitment(合同义务), (C)interactive context: terms and conditions(条款).

In addition in this long sentence the main structure is “if..... then if.....” and the main clause includes a conditional sentence. At the same time, the subordinate clause involves an appositive clause led by proof, and then additional components are used to modify “purchase”. So the best translation is such as follows:

如果买方向卖方证实·买方可在合同年度内从某一制造商处按类似条件规定购得在美国生产的上述产品·且质量一样·数量等同本合同年度尚未交货数量·但价格低于本合同之定价;若卖方拒绝依据本合同就上述数量商品按此价格进行降价·买方可向其他制造商购买同等数量商品·并据此减少该合同所承担的购货义务。(Song, 2001)^[7]

4. Conclusion

The goal of this thesis is to analyze long sentences in legal English and it systemically puts forward strategies for translating long sentences in legal English. We can now well conclude that while translating translators should properly use logical connectors “and” and “or” and correctly analyze modified components and make out the relationship between several clauses to creatively deal with long sentences in legal documents, which is a prerequisite for a qualified translator. Also, while doing translation, the following strategies should be adopted: both common strategies such as inversion and division and unique ones--analysis of different legal texts, application of different legal texts and a good understanding of grammaticalization of legal English. Legal translation is an arduous and boring work and translators are supposed to master the essence so as not to loss oneself in long sentences in legal English.

It is my sincere hope that this paper will contribute to further research on long s-entences in legal English as well

as translation strategies in this regard. This paper only involves some aspects of long sentences in legal English, but comprehensive information is not included. So it is open to criticisms and suggestions.

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