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**Cultural and Linguistic Challenges in Translation:  
An In-depth Analysis of Religious and Legal  
Terminology within Marriage and Divorce Contracts**

A paper

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**Abstract**

Culture encompasses a broad spectrum of elements including beliefs, rituals, laws, traditions, habitual practices, experiences, and knowledge that individuals acquire within a given society. Cultural disparities can significantly influence the process of translation. However, translators encounter challenges in preserving cultural nuances from the source language within the target text, particularly in legal contexts. This study aims to evaluate the translation of culture-bound legal terminology, drawn from "The Reliable Guide to Legal Translation" authored by Adel Azzam Saqf Al-Hait, alongside other selected legal documents. Juliane House's model



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(2015) of translation quality assessment will be applied to evaluate the translation accuracy of these terms and to discern the translation strategies employed by translators.

Keywords: Legal, Religious, Adaptation, Loan, Substitution, Transliteration.

### **Introduction**

Empirical research in the field of legal language translation is relatively limited compared to other areas within translation studies. However, translation serves as a cross-cultural medium of communication, requiring translators to mediate effectively between two languages. In legal translation, this responsibility is particularly crucial, given its sensitive and specialized nature. Translators in this field must possess a comprehensive mastery of their working language, as each word holds significant consequences, potentially impacting lives.

Legal translation is a specialized discipline demanding a high level of proficiency not only in legal terminology in general but also in terms specific to particular cultures. According to Fiola (2013, p.63), specialized translation pertains to content and format characterized by specialized knowledge, which may manifest lexically or syntactically.

This paper explores the nature of legal translation, highlighting the challenges encountered by translators, particularly in relation to legal terminologies specific to Arab culture. It investigates effective strategies for translating such terms, culminating in a case study analyzing selected texts.

### **1- Review of Literature**

The nexus between language and law epitomizes the societal framework that governs coexistence, as legal systems delineate norms and regulations. This legal framework is intrinsically intertwined with the language prevalent within a society, thus rendering legal translation profoundly influenced by cultural norms embedded within linguistic structures. Traditionally, approaches to translating legal texts have predominantly focused on achieving literal equivalence between terms across legal systems, often disregarding the nuanced impact of culture or language-specific terminology on the translation process.

Despite legal translation's attribution of sensitivity and rigidity, scholarly exploration into the implications of a strictly literal approach to legal translation remained



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relatively nascent until the late 1990s (Sarcevic, 2000, p.24). The era of globalization, accompanied by burgeoning initiatives for bilateral and multilateral agreements spanning social, economic, educational, and legislative domains, has catalyzed interdisciplinary studies in legal language. Hart's seminal work "The Concept of Law" (1990) served as a watershed moment for legal language theorists, advocating Austin's proposition of utilizing a heightened linguistic awareness to enhance the comprehension of legal phenomena (Hart, 1994, pp.14-15). Furthermore, Mellinkoff's (1963) diachronic examination of legal language underscored its inherent features, subsequently informing practical applications within legal practice.

Emery's (1989) comparative analysis of Arabic-English legal texts emphasized the imperative for translators to consider structural and stylistic disparities between language systems to facilitate accurate translation (Emery, 1989, p.183). Similarly, Al-Bitar's (1995) examination of legal language underscored its penchant for intricate sentence structures, extensive use of WH-clauses, and post-modifications (Al-Bitar, 1995, pp.48-63).

In her revised model of Translation Quality Assessment, House (2015) delineated translation into overt and covert categories, underscoring the necessity for translators to adapt their approach based on the expectations and objectives of the target audience (House, 2015, p.70). Hickey (1998) emphasized the importance of replicating the intended effect of the source text on the target audience, particularly in legal translation contexts (Hickey, 1998, p.225).

While prior scholarship in legal translation primarily focused on linguistic aspects, Sarcevic (2000) highlighted the pragmatic dimension, stressing the translator's role in producing parallel texts that yield equivalent legal effects rather than merely linguistic parity (Sarcevic, 2000, p. 71). She further underscored the significance of textual equivalence over terminological equivalence and acknowledged the profound cultural implications inherent in legal document translation (ibid, p. 48).

Overall, these scholarly endeavors underscore the multifaceted nature of legal translation, encompassing linguistic, pragmatic, and cultural dimensions, thereby enriching our understanding of the complexities inherent in this specialized discipline.

### **2-Difficulties In Arabic- English Legal Translation**

Legal language is characterized by its formulaic nature and adherence to distinctive syntactic, semantic, and pragmatic structures. This specialized linguistic system is intricately intertwined with the cultural and historical norms of the language in question. Legal discourse is often regarded more as "parole" than "langue,"





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emphasizing its role in guiding verbal actions within a legal framework. As articulated by Sarcevic, the primary function of language in normative legal texts is to prescribe specific legal actions aimed at achieving predetermined objectives (Sarcevic, 2000, p.132). Similarly, Beaugrande and Dressler describe legal language as communicative occurrences produced within specific temporal and spatial contexts to fulfill particular functions, with legal texts serving as instruments of law (Beaugrande & Dressler, 1981, p.4).

Legal translation poses considerable challenges due to the manner in which legal concepts are articulated through language, often without explicit consideration of the cultural and linguistic nuances inherent in both the source and target languages (Cao, 2007, pp.17-19). Linguists commonly characterize legal language as "normative," signifying its role in establishing, expressing, and enforcing norms within a legal context (Jori, 1994, p.98). Furthermore, legal language operates within a distinct register, employing specialized terminologies tailored for use among legal professionals, including lawyers, judges, and legislators, to serve specific communicative purposes.

The complexity of legal translation is compounded when the languages involved are linguistically and culturally distant, exacerbating the challenges of bridging the gap between them. Arabic and English, for instance, belong to unrelated language families—Semitic and Indo-European, respectively—each characterized by unique cultural, syntactic, semantic, and lexical systems. English legal language is rooted in the country's common law tradition, whereas Arabic legal discourse is heavily influenced by civil and Islamic law principles, prevalent in countries such as Saudi Arabia, Egypt, and Iraq. As Sarcevic notes, the meaning and function of legal terms within each legal system are deeply embedded in its legal culture (Sarcevic, 2000, p.88).

Translating Arabic legal documents into English and vice versa presents challenges at lexical, semantic, syntactic, and cultural levels. However, for the purposes of this study, the focus shall be primarily on the cultural dimension of these challenges.

### **3.1. Difficulties in Translating Legal Culture-Specific Terms**

Arabic legal texts, such as marriage contracts, divorce contracts, legacy contracts, guardianships, and trust and custody contracts, are replete with cultural and religious terminology. Translating such texts necessitates comprehensive familiarity with the terminologies employed therein and the strategies required to convey them effectively in the target language. According to Schäffner and Christina (1997), concepts derive their meanings from their immersion within socio-culturally determined frameworks,



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which are often culture-specific (Schäffner & Christina, 1997, pp. 134-136). Moreover, the language in which the law is articulated must resonate with the cultural and traditional dimensions inherent to that language, as language-specific terms may not readily convey identical meanings across different cultural contexts without employing specific translation strategies (Legrand, 2005, p.34).

Snell-Hornby (1988) views legal translation as a process of replicating the source text within the target text against the backdrop of a new cultural context, with the specific function of the text serving as the primary determinant of the translation approach. This is because lexical items within different cultures may serve distinct functions and carry nuanced meanings (Snell-Hornby, 1988, p.34). The translation of culture-specific terms presents significant challenges for translators, as these terms are inherently tied to specific languages and cultures, and the target language may lack direct equivalents (Bing, 2006, p.77). In instances where translators encounter items deeply entrenched within the source language culture, they must devise the most appropriate solutions to bridge the gap in the target text.

### **3.2. Strategies for legal Translation**

Translating between two distinct language systems inevitably presents challenges for legal translators, akin to translators working in other genres. While issues stemming from lexical and grammatical disparities may be resolved relatively straightforwardly, the translation of concepts or elements unique to the cultural context of the source language system poses a more substantial burden. Šarčević (1985) contends that legal translators must overcome cultural barriers between the source language (SL) and the target language (TL), noting that with culture-specific terms, finding an adequate TL equivalent for the SL lexical item is often impractical (Šarčević, 1985, p.128).

#### **3.2.1. Free vs. Literal translation**

Legal translators are obligated to adhere closely to the source text, given their engagement with the "letter of the law." This requirement justifies their endeavor to seek the closest correspondence in both form and meaning in the target language (Šarčević, 1997, p.235). Translators are prohibited from altering the laws of the source text country to align with those of the target text country, as legal language is considered "sensitive and sacred" according to Wolf (2011). The Romans were historically the first to enforce literal translation upon legal translators dealing with such texts (ibid). Kasirer (2001, p.330) asserts that legal meaning is entirely derived from a direct reading of the letter of the law and is detached from its political, social,



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and economic context. Therefore, any compromise in the accuracy of meaning is perceived as a violation of positivism and contrary to legal principles.

While literal translation has traditionally been the primary strategy employed with legal texts, the debate between free and literal translation persists. Gutt (1991, p.19) suggests that legal translators face difficulty in choosing between free and literal translation due to the sensitive nature of the texts they handle. However, Hjort-Pedersen (1996, p.370) conducted a comprehensive study based on practical experience to investigate the appropriate strategy for translating legal texts, concluding that translators need not rigidly adhere to the source text. Rather, they are required to produce a target text that serves the same function as the original. Koutsivitis, supported by Šarčević (2000, p.230), argues that legal translators must convey the sense of the source text in the form of the target text, implying that even translators working for the European Union are permitted to exercise creativity in their translations.

### 3.2.2. Functional Translation

Some translation theorists argue that when translating special texts such as legal documents, adherence to the expectations of the target text audience is paramount. In such cases, translators are deemed to have the authority to adjust the target text lexically, syntactically, and stylistically to achieve a communicative function (Wolf, 2011, p.229). Vermeer's skopos theory advocates for a translation approach that is oriented towards the target culture (TT-Culture-oriented), thereby opening the door for new shifts in translation methodologies. According to this theory, attaining functional equivalence aligned with the needs of the target text readers is acceptable (Mundy, 2016, p.126).

While traditional translators aim to produce texts that preserve the function, form, and content of the original, Vermeer contends that translated texts can achieve a communicative function in the target language, allowing translators to deviate from the form and content of the original (ibid). However, this theory has faced criticism from linguists who argue that not all texts, especially those concerning legal matters, allow for such flexibility. Madsen (1997, p.17) suggests that the selection of an appropriate translation strategy for a particular legal text is contingent upon legal considerations. The decision to adhere to target language conventions is primarily determined by the type of law governing the contract, rather than solely by function. Moreover, Madsen notes that unlike Vermeer's skopos theory, authenticated translations of legislation do not involve a shift in function between the source and target texts (ibid).





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In summary, a functional approach to legal translation may not be suitable for all types of legal documents. It is crucial to first analyze the text to identify the communicative elements that require functional translation, and then decide which strategy to employ. When faced with challenges arising from cultural differences between the source and target languages, such as culture-specific terms, translators should carefully select appropriate strategies such as:

### 3.2.3. Transliteration or Transcription

When translators encounter culture-specific terms, it is common for them to initially resort to a strategy known as "transliteration." According to Šarčević, transliteration involves transcribing the source language (SL) term using the alphabets of the target language (TL), resulting in the SL term appearing as a loan word in the TL, often enclosed within inverted commas or italicized (Šarčević, 1985, p.140). This strategy is particularly applicable when a borrowed word from the SL is deeply embedded in the source culture and then adapted in the target culture, eventually becoming integrated into the target language (TL) system, provided it is used within a specific context (ibid).

However, it is argued that transliteration may lead to misunderstandings among target text (TT) readers, especially in languages with fewer speakers. To mitigate this, translators may need to provide explanations of the meaning and contextual use of these terms, either through footnotes or within brackets in the text. This approach aligns with another strategy proposed by Šarčević (1985) known as "translation by definition," which will be discussed further in the following section.

Alternatively, translators may employ a technique referred to as "commentary translation," where they provide commentary on their translation process, explaining the challenges encountered in translating a particular term and how they resolved these issues, along with further elaboration on the term's meaning in the TL (ibid). For instance, the term "زكاة Zakah" could be translated using one of these strategies.

### 3.2.4. Loan Translation

This approach is commonly employed by legal translators when they find it necessary to introduce new legal terms into the target language system. Before incorporating these loan words into other systems, they must first undergo a process of naturalization within the system from which they are borrowed, thereby integrating them as integral components (Šarčević, 1985, p.130). Legal translators must exercise caution when employing this strategy, ensuring that the loan term is clearly



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understood and does not allude to concepts other than the intended one. Certain regulatory authorities may impose specific rules regarding the use of loan words, particularly when these terms pertain to sensitive legal matters that impact a country's social and political standing among its counterparts.

Furthermore, when a team of professionals formally recognizes a cultural term as a loan word, it becomes mandatory for this loan word to be consistently utilized in all subsequent legal translations (*ibid*). For instance, the term "طلاق خلعي" (Khul' Divorce) could be subject to this process.

### 3.2.5. Adaptation

The ongoing debate surrounding the adaptation strategy remains a topic of contention in translation theory. As defined by Šarčević (1985), adaptation entails formulating the source language (SL) term in a manner that conveys a specific message reflective of the social reality of the target language, ultimately serving the same function. In essence, adaptation can be likened more to a "cultural transplantation" than a direct translation. Kade (1980) elucidates this distinction by highlighting that in translation, the translator's task is to faithfully reproduce the information content of the source text, whereas in adaptation, the translator modifies the source text to align with the cultural context of the target language, thereby altering the informational content (Kade, 1980, p.154). This differentiation can be elucidated through back-translation, as culture-specific words often lack full equivalence.

For instance, "Cold argument" would not be translated directly into "مناقشة باردة" but rather into "حجة واهية", as the target language (TL) may possess a different term with the same underlying meaning.

### 3.2.6. Translation by Description

In instances where target language equivalents fail to accurately convey the intended meaning, translators employ a strategy known as "expansion" to compensate for potential under translation. This involves adding supplementary information, whether in the form of footnotes, bracketed annotations, or an index. Expansion typically consists of providing definitions or explanations of concepts found in the source language that need to be conveyed within the target language culture. Essentially, lexical expansions prioritize fidelity to the source text, with no alteration or adaptation of the concept into the target language (Šarčević, 1990, p.89). For example, "irrevocable divorce" may be translated as "طلاق بائن بينونة كبرى لا رجعة فيه" in Arabic.





### 3.2.7. Substitution

Legal translators have the option to employ the substitution strategy when confronted with culture-bound terms. This strategy involves a blend of transliteration, italicization, and substitution within brackets. It is utilized when translators encounter difficulty with a specific cultural term and find transliteration or direct substitution impractical, leading them to resort to a loan translation instead.

With the substitution strategy, the term in question is elucidated in terms of its form and function, resulting in a loss of its cultural specificity as these descriptions may often be lengthier than the original source language term itself. Consequently, the outcome resembles more of a paraphrase than a direct description. Šarčević (1990, p.89) emphasizes that descriptive substitution should only be employed when it is impossible to render the source language culture-specific legal term into the target language using any other strategy.

For instance, the Arabic term "عقد زواج" may be translated as "marriage deed" rather than "marriage contract" in English, as it does not involve any mention of money or an advanced dowry.

## 4-Methodology

The methodology employed in this paper will be qualitative in nature, focusing on assessing the quality of translation concerning the adequacy of rendering culture-specific terms. Specifically, the study will utilize Juliane House's framework for assessing overt and covert translation, shedding light on the strategies employed by translators to address challenges related to culture-bound words.

### 4.1. House's Model of Translation Quality Assessment (1997)

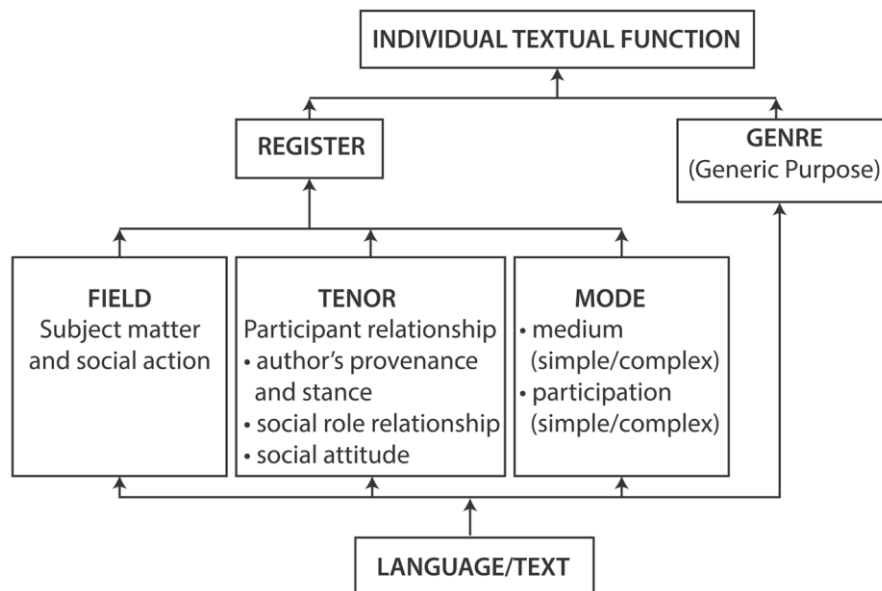
In essence, House's Translation Quality Assessment (TQA) model is grounded in theoretical frameworks such as Halliday's systemic functional linguistics, pragmatics, and functional linguistics, with discourse analysis playing a pivotal role in examining individual texts (House, 1996). Additionally, the model incorporates Halliday's language functions (1973) and Crystal and Davy's dimensions of text situational context (1969).

Originally introduced in 1977, House later revised her model in 1997, focusing on achieving functional equivalence between the source and target texts in terms of pragmatics, linguistics, and stylistics (House, 2015). House emphasizes the importance of analyzing the text prior to translation to facilitate the identification of optimal equivalents, referring to the analyzed text as "the individual textual function" (ibid).



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Having set the principal components of the model, then the complete model scheme would be as follows:



"A scheme for analyzing and comparing original and translation texts"

#### 4.1.1: Overt and Covert Translation

In the realm of translation, two main categories emerge: overt and covert. This classification, initially proposed by Schleiermacher in 1813, stands out due to its integral role in the comprehensive theory of translation criticism (House, 2015, pp.66-68).

#### 4.1.2: Overt Translation

An overt translation is characterized by its transparency, where the translated text is clearly identified as such rather than being perceived as a "second original." In overt translation, the translator remains faithful to the source text without making any significant alterations. This approach is commonly used in historical or informative texts intended for audiences with no specific time constraints, such as artistic or aesthetic works. Unlike covert translation, overt translation aims to familiarize the target audience with the culture of the original text (House, 2015, pp.66-68).



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#### 4.1.3: Covert Translation

A covert translation seamlessly integrates the essence of the original work into the target text, employing various strategies to ensure cultural resonance with the target language audience. In covert translation, the distinction between the original and the translated text may not be readily apparent, as the original text is not tailored to a specific audience. Both the original and translated texts maintain pragmatic equivalence, serving the same functional purpose. However, to maintain the pragmatic function of the source text in the target text, a cultural filter is applied (House, 2015, pp.66-68).

#### 5- Data Analysis

A comprehensive understanding of the cultures involved in translation can significantly minimize errors made by translators, especially given the prevalence of cultural norms and concepts inherent in legal language. Consequently, challenges inevitably arise. The following table delineates culture-bound terms alongside their translations and the strategies employed by translators.

ST Items	TT Items	Strategy
بسم الله الرحمن الرحيم	In the name of God, the Compassionate, the Merciful	Literal Translation
خلو الموانع	Eligibility	Translation by definition
ولست على عصمة احد	Free of any Sharia' or legal impediments	Translation by description
المحكمة الشرعية	Sharia' Court	Loan translation/ Transliteration
بنت بكر عزباء	Single virgin girl	Adaptation
اشهادا شرعيا	Sharia' attestation	Loan translation
على كتاب سنة الله ورسوله	According to the Holy Book of Allah and the Sunnah of His Messenger	Literal and transliteration
على مذهب ابي حنيفة	In accordance with the Doctrine of Abu-Hanifa	Translation by description
لأا قدر الله	Allah Forbids	Loan and adaptation
نفقة	Allimony	Adaptation
الموانع الشرعية والقانونية	Sharia' and legal impediments	Literal and transliteration and substitution
عقيقة	Sacrifice/ Aqiqa	Adaptation and transliteration
والله تعالى خير الشاهدين	Allah is the best witness	Adaptation
العدة	Idda (waiting period)	Loan and translation by definition
خلع	Khul (forced divorce by side of the wife)	Loan translation by definition
مهر معجل	Advanced dowry	Adaptation
عند الطلب والميسرة	Upon demand and availability	Substitution
زواج عرفي	Customary marriage (Urfi marriage) or common-law marriage	Loan and translation by definition
عند اقرب الأجلين	Upon death or divorce	Substitution
بائن بينونة صغرى	First instance irrevocable	Substitution





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### 6-Discussion

The analysis of the table reveals that when translators encounter culture-bound terms, their initial recourse is to seek equivalence in the target language. In cases where no direct equivalence exists, transcription followed by elucidation is typically employed. Subsequently, through frequent use in the target language, the term may become established as a loan word. Regarding the specific translations provided, the term "الله" is aptly rendered as "Allah" in one instance, as it accurately refers to the singular Creator. Conversely, translating it as "God" may introduce ambiguity, potentially encompassing entities worshipped by divergent belief systems.

The term "خلو من الموانع" is translated literally, complemented by an explanatory footnote elucidating its nuanced meaning, emphasizing the absence of legal or Sharia impediments to marriage. Similarly, "عصمة" denotes a cultural concept connoting protection or preservation, particularly pertinent within Islamic cultural contexts, where it signifies the safeguarding of women within marriage.

Terms such as "Urfi," "Khul'," "Aqiqqa," and "Idda" are transliterated and explained, either through footnotes or bracketed annotations, to ensure comprehension of their cultural significance. However, the translation of "كتاب الله" as "Holy book" is misleading, as it is commonly associated with the "Bible." A more accurate rendering would be "Glorious Quran."

Moreover, the Arabic phrase "اقرّب الأجلين" lacks direct equivalence, prompting the translator to substitute it with "death or divorce" in English, preserving the intended meaning with minor additions. Similarly, "بائن بينونة صغرى" is translated as "irrevocable divorce," employing a similar strategy to convey the intended concept effectively.

### 7-Conclusion

Culture presents formidable challenges in translation, particularly within the intricate realm of legal texts, where sensitivity compounds the difficulty. Translating between Arabic and English compounds these challenges further. When confronted with terms unique to a language, translators must carefully select strategies tailored to each specific case. Arab translators commonly rely on definitions and transliteration when grappling with concepts absent from the target text—a prudent approach that facilitates the integration of foreign languages into Arabic without cumbersome explanations, which risk diluting meaning. Literal translation, however, is not always a panacea. Despite this, translations adeptly convey religious terms and rituals inherent to Arab culture, with the exception of the mistranslation of "Holy Book of Allah." Consequently, cultural background knowledge emerges as a critical solution to such dilemmas, underscoring the imperative for translators to possess profound familiarity with the cultural nuances of both languages involved.



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