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THE FEATURES OF LAYOUT IN ENGLISH AND ARABIC LEGAL TEXTS

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ABSTRACT

In this paper I shall attempt to provide a linguistic comparison between Arabic and English legal texts layout. In the first part I shall deal with the macro-structure of these texts, pointing out similarities and differences, while in the second part the aim will be to identify more language specific matters.

KEYWORDS: Arabic Translation, English Text, Synatax, Philology, Gotesburge

INTRODUCTION

As in any non-fiction piece of writing, legal texts follow a standard skeletal plan. Due to the large number of texts that can be referred to as legal, it would be time consuming and perhaps repetitious to deal with all types to investigate their structure. I shall focus on the problem areas that translators, and indeed all readers, may encounter with legal texts. The features of layout in English legal texts constitute one of the problem areas expounded by Crystal and Davy (1969; p. 213). The problem lies in the fact that the significance of some layout features may not be readily understood by the reader.

1.1 Macro-Structure

It is perhaps appropriate at this stage to explain exactly what is meant by 'layout':

> *"Layout refers to the sketch or plan of the text's physical appearance. Basically, this relates to paragraphing, indentation, and graphitic choices, viz., capitalizing, italicizing, underlining and bold-typing. On the other hand, these features are sometimes governed by language specific constraints such as the standard of paragraphing and capitalizing in English." (Farghal and Shunnaq 1992; pp. 205-206)*

Whether it is a whole statute, a decree, a court order, an international treaty or a sales contract, there is always a preamble which sets out the reason why the document should exist. There may be one or more reasons, and these are often listed in a point form starting with 'whereas', 'further to', 'subject to' or 'pursuant to' or similar terms. Sometimes these reasons may be in the form of a list of a list of non-finite clauses which start with 'noting that…', 'acknowledging that…' and so forth. All these points have to be treated as one whole paragraph connected with the initial noun phrase in the preamble. The meaning becomes complete only when the verb appears after these points, often preceded by a portmanteau type word such as 'therefore', 'hereby' and so on. What follows is usually a list of obligations or things to be done by either party to the contract or agreement, or by everyone if the document is a statute or an order. The layout of some legal documents could also take a simpler form, with the names of the parties stated, together with the details of the property or service subject of the document, followed by the list of obligation and things as stated.

Maley (1994) sums up the physical organization of acts as follows:

> *"The actual configuration of elements, both obligatory and optional, may vary … and certain types of statute have a specific generic structure, however, some generalizations across the different types and jurisdictions can be made. There is first pre-material, giving long title, year and number, short title, preamble and an enacting formula. The body of the statute follows, divided into numbered sections, subsections and paragraphs. Larger units may be used; for example, a definitions part or division, followed by a substantive part and a procedural part. Schedules are appended as end material. Definitions may occur here as a schedule, if they do not constitute a separate part in the body of the Act. Some elements are optional, e.g. short title and preamble, division into parts, but the sequence of elements is invariable". (Maley 1994; p. 19)*

Indentation in the legal texts is very important and could easily lead to problems in understanding. This is due to the fact that a paragraph might lead to two or more other possibilities and so forth. Capitalization is another area which could cause problems; example 'according to the law' and 'according to the Law'. The first refers to the nature of law in general, while the second refers to the Law under consideration.

A comparison between several English and Lebanese and Egyptian (Arabic) statues shows that the description given above by Malery applies across all these statutes. While this practice is particularly apparent in the enabling decrees in the case of Arabic statutes, Maley (1992; p. 24) states that the numbered and lettered paragraphs constitute a typical drafting practice also in all common law countries. This feather is more prominent in other legal documents, namely treaties and the like, in both English and Arabic, although the latter may have been so as a result of the influence of translations of the former. Accordingly, a professional translator who has been exposed to statutes of the English and Arabic systems should normally have no difficulty in providing meaningful and well structured translation in either direction. Undergraduate translation students at University level in Sudanese universities who have been given relevant section of various legal texts for translation into Arabic have in fact provided adequate translations despite their limited knowledge of legal language.

Results from a similar exercise reported by Farghal and Shunnaq (1992), however, are not as encouraging. In their study, 13 postgraduate translation students at a Jordanian university who were asked to translate a United Nations legal text seem to have committed mistakes stemming from their failure to understand the significance of the skeletal structure of the document, despite their free access to reference books during the test. Farghal and Shunnaq explain, obviously correctly, that layout features can be of significance in the text, i.e. their employment affects the meaning of the text and, consequently, they are relevant to the process of translating.

> *"This being the case, the translator should be aware of the employment of significant layout feature in technical texts in general and legal texts in particular. The failure to do so may affect both the cohesion and coherence of the text." (1992; p. 206)*

The UN text subject of Farghal and Shunnaq's study is in fact one sentence that is 300 words long. Perhaps it is appropriate to reproduce here a short passage which seems to have presented difficulty to students in their study.

Text 1.1 The General Assembly

Recalling its resolution 35/206N of 16 December 1980. gravely concerned about the inhuman oppression of millions of women and children under apartheid, commending Noting the …,

- *Invites all government and …;*
- *Encourages … ; …*

In the study 10 out of the 13 examinees have filed to appreciate the significance of the layout, and also used many full-stops in their translations, thus interrupting the structural and semantic flow of the text. Accordingly, rather than making the first unnumbered points premises for the resolution itself, some of the translation examinees have transformed them into a statement. In so doing, the aim of the text has collapsed, because the premises have become resolutions and accordingly the resolutions themselves, which follow the premises in the original English text, would be lacking in supporting material. Following is a sample of the examinees' translations of the first part of the document (1.1.A) followed by an accurate translation as provided by Farghal and Shunnaq (1.1.B).

Text 1.1.A

"الجمعية العامة تشير إلى قرارها رقم 206/35ن الصادر في كانون أول 1980. كما تعبر عن قلقها الشديد تجاه الاضطهاد اللا إنساني لملايين النساء والأطفال تحت نظام الفصل العنصري, ..."

[Black translation – The General Assembly refers to its resolution No 35/206N of December 1980. it also expresses its grave concern about the inhuman oppression of women and children beneath apartheid, …]

Text 1.1.B

"إن الجمعية العامة إذ تشير إلى قرارها 206/35ن المؤرخ في 16 كانون الأول 1980, وإذ يساورها القلق الشديد إزاء الاضطهاد اللا إنساني لملايين النساء والأطفال في ظل الفصل العنصري, ..."

[Back translation – The General Assembly, Recalling its resolution 35/206N dated 16 December 1980, Gravely concerned about the inhuman oppression of millions of women and children under apartheid, …]

It appears that examinees who were the subjects of this study lacked more than just an appreciation of the significance of the layout in this text. The word 'under' which has been literally translated into Arabic to mean 'beneath' signifies a more acute problem that has to do with their translating competency in general. The Arabic equivalents of 'under' do not have the metaphoric sense conveyed by the English word, hence the meaningless 'beneath apartheid' in the above quotation. It is maintained that layout of English legal text is a very significant feather, as in many cases constitutes an essential framework for understandability. Layout feather, however, should not pose a level of difficulty that cannot be solved by properly trained translators.

1.1.1 Sentence Length

Another feather of English legal is the extraordinary length of sentences, be it in statutes or other legal documents, including international treaties (and the UN resolution like the one quoted in 1.1.1 above). In the past English statutes were even more awkward – each section was presented as a continuous and usually unpunctuated single sentence, unlike the present statute with the elaborate use of other punctuation forms within the one sentence, according to Renton (1975) the retention of the one sentence section is directly traceable to institutional methods of interpretation, since lawyers believe

that it is easier to construe a single sentence than a series of sentences (elaborated by Maley 1994; p. 25). There is, therefore, less potential for uncertainty.

The length of the sentence quoted by Farghal an Shunnaq in the preceding section is not unusual in English legal documents. Bhatia (1994; p. 141) gives another example, section 14A(1) of the Income Tax Act, 1984, Singapore, which is 271 words in length, and which compares with the average 27.6 word-long sentence in written scientific English as calculated by Barber (1962).

Currently produced English legal texts still seem to alternate between the long sentence without punctuations and the more normally punctuated sentence. This has been found to be the case even in powers of attorney. There is, however, a historical background for the Straits Settlements, explains that bills, at one stage of their production, were engrossed without punctuation on parchment,

> *"But as neither the marginal notes or the punctuation appeared on the roll, they formed no part of the Act. This practice was discontinued in 1849, since which time the record of the statute is a copy printed on vellum by the Queen's printer; and both marginal notes and punctuation now appear on the rolls of Parliament". (Maxwell 1883; pp.51-52).*

The above examples should not be treated as extremes. A quick glance at the Acts quoted earlier in 2.4 reveals many sections that are between 100 and 200 words long. To investigate this feather in Arabic statutes, I have conducted a study on the Lebanese Act of Civil Proceedings. This has shown a more liberal use of full-stops across sections and paragraphs. It has also been found the where the lettered or numbered sub-paragraphs in the English texts usually end in commas or semi-colons, depending on the content and structure of each sub-paragraph, the Arabic sub-paragraphs invariably ended with a full stop. Thus Paragraph 93 of the Lebanese Act of Civil Proceeding reads as follows:

Text 1.2.A

"مادة 93 – تنظر محكمة الاستئناف في الطعن بالأحكام والقرارات القابلة للاستئناف والصادرة ضمن منطقتها:

1. عن محاكم الدرجة الأولى في القضايا المدنية والتجارية.

2. عن دوائر لتنفيذ واللجان والمجالس الخاصة في الأحوال التي ينص عليها القانون."

A possible translation of the quoted section is:

Text 3.2B

> *"Article 93. the Court of Appeal shall hear appeals against appeal able orders and judgments originating within its jurisdiction:*

- *From Courts of First Instance in civil and commercial matters.*
- *From executive departments and special committees and boards in matters stipulated by the Act."*

Apart from the full-stops at the end of the tow numbered clauses, of note is that the preposition 'from' in the quoted paragraph was left to occur at the beginning of each numbered clause rather than being moved up to the end of the opening sentence, that is immediately after 'jurisdiction'.

The positioning of the first full stop in Text 3.2.B, that is in Point 1) crests a flaw in the linguistic and legal sense. This leads to a legal problem, because it would then mean that the court of Appeal shall hear appeals from the Courts of First Instance in civil and indeed uselessly, but most probably unintentionally. One may be pardoned to think that punctuation is probably not as relevant in Arabic as it is in English. The truth, however, lies elsewhere.

1.1.2 Punctuation as a Matter of Interpretation

In both English and Arabic legal environments, the judiciary is referred to as the highest authority. Yet it seems there are significant differences. In common law countries judges resort to linguistic argumentation in what appears to be an effort to find a seemingly scientific and neutral justification for difficult decisions (Solan 1993; p. 11). Solan explains that in many instances the linguistic argumentation either falls hopelessly flat or in seen as window dressing. Nevertheless, courts and statutes in common law countries cannot function effectively without judges capable of successfully and convincingly interpreting these statutes. When a judge for instance, declares to the members of the jury that they are the judges of the facts while he or she judge of the law, they simply mean that they are in charge of interpreting the law, directly linguistically and indirectly based on precedents, a comma or a full-stop may and do decide cases. When a judge gives a decision or order verbally, they will have already exhausted all possible counter-argument already referred to in text 2.7 above is a case in point.

> *"In given judgment, a judge could, of course, simply declare the principle of law which is applicable to the instant case. The principle of law is called the 'ration decided' or reason for deciding. But common law judges do not discharge their obligations so simply, not only do they declare the law, they make explicit the reasoning processes which have led them to that decision, the cases they have considered, the analogies they have considered and rejected – in short, their individual 'fullest examination'." (Maley 1994; p. 43)*

While statutes in common law countries have to be studied carefully and interpreted by judges to make sure that the flexibility and specificity of sections of the act have been fully considered, continental judges (as well as those in the Arab countries whose legal systems have been shaped to a large extent on the European models) are, according to Friedman (1975; p. 223) likely to be officials and bureaucrats, and as such their decision-making is correspondingly restrained and frequently rigid in style and format. For continental judges it suffices to quote the number of the section under which a particular offence fits without much about analysis of the text of the law itself. Friedman's statement appears to be too harshly set against judges outside the common law countries, for they too do enjoy a certain latitude of freedom in interpreting statutes. The Lebanese Act of Civil Proceedings, for instance, stipulates in Article 4 that

> *"A judge may not refrain from making judgment on the pretext of the vagueness or lack of provision … When a certain provision is ambiguous a judge shall interpret it in line with its intended purpose and such that harmony between that provision and the other provision is assured".*

The above and similar provisions nevertheless fail to give judges in the Arabic and similar legal environment the same interpreting power afforded to justices in common law countries. Accordingly, in the former situation the question of full-stops instead of semi-colons, for instance, should not mean a lot, not because of the judges' incompetence or failure in any way, but simply because their limited role dose allow or require them to conduct comprehensive analysis undertaken

by their counterparts in the common law countries, where judges can also assume the role of linguists in interpreting the law.

1.1.3 The Nature of Punctuation in Arabic

The situation of the linkage system in Arabic still be side to be chaotic, notwithstanding the many studies that have dealt with this topic. Kharma (1985) states that all classical Arabic writings are devoid of punctuation, while Shouby (1951: p. 292) claims that the Arabs are characterized by "general vagueness of thought" due to the fact that modern literary Arabic is constituted of "diffuse, undifferentiated and rigid until and structures" (other cited in Sa'adeddine 1987; p. 143). These remarks have apparently been made on the assumption that Arabic writing, both classical and modern, dose not follow a systematic punctuation system. Sa'adeddin, on the other hand, claims that these are simply partial truths. He makes the point that Arabic relies more heavily on linguistically-overt linkage system as opposed to the Western natationally-codified systems. He further suggests that criticism by researchers of Arabic linkage system settled into a deprecatory stance towards the Arabic language and culture.

Despite the criticisms against Arabic punctuation practice and the defense by Sa'adeddin and others, partly motivated by nationalistic feelings, the fact that we have to face is that the way punctuation is used in Arabic texts is erratic to say the least. It appears that every writer uses a system to suit his or her own needs, or one which is influenced by the writer's training. There are hardly two books in Arabic that follow identical systematic punctuation rules that are based on linguistic analysis. Sa'adeddin is obviously correct in stating that the Arabic "و", i.e. "and", is equivalent to the comma in English and that it was an obvious mistake for some Arabic writers to adopt the comma instead. I should add that, based on an observation of Arabic writers in the past, it would be even worse to insert "و"after the comma as some translators and Western influenced writers level of uncertainty, as the writer wants to retain the Arabic "و" but at the same time also desires to emulate the English way or writing and thus uses the comma. Sa'adeddin's defense of the Arabic linkage system, however, is too narrow and cannot be extended to apply to other linkage forms. Besides, it should not exonerated us from responsibility to produce balanced, coherent and cohesive text that are capable of being interpreted on a sound systematic basis, especially when it comes to translating legal text. It is admitted that judges in the Arab countries may not concern themselves with interpreting the law to the extended their counterparts do in common law countries. But statutes are not the only legal documents that affect the lives of people these days. In a world of international treaties which literally regulate even the air we breathe, there is no excuse for leaving Arabic, which is United Nations language, lagging behind the other languages simply because some scholars maintain that the existing linkage system is appropriate. It seems, however, that even in treaties among Arab countries drafters have elected to do away with punctuation. The following is taken from the Arab Solidarity Accord-II

> *"1. عقدت هذه الاتفاقية لمدة عشر سنوات من تاريخ نفاذها وإذا لم تعدل قبل انتهاء هذه المدة باتفاق الحكومات المتعاقدة تظل نافذة المفعول إلى حين انتهاء أجلها, وبعد ذلك بانقضاء سنة من تاريخ تقديم إحدى الحكومات المتعاقدة للحكومات الأخرى بالطرق الدبلوماسية إخطاراً بالانتهاء.*
>
> *2. يصدق على هذه الاتفاقية وفقاً للأوضاع الدستورية المرعية في كل من الدول المتعاقدة وتصبح نافذة من تاريخ تبادل وثائق التصديق (على أن يتم تبادل هذه الوثائق في القاهرة Mansour 1965; p. 49)*

Although this accord is relatively new (1957), there are no full-stops and only one comma in the first paragraph, which is positioned haphazardly. There are no full-stops either in the cited passage or in the other four paragraphs cited by Mansour but not reproduced here. As a matter of fact the single comma is the only punctuation tool in the whole text.

There is no justification for the almost complete absence of non-lexical linkage tools. Even classical writing did have punctuation, and classical work that is being reprinted after much scrutiny usually dose contain a lot of punctuation. *Nahjul Balagha* [Peak of Eloquence], which is the collection of sermons, letters and saying of Imam Ali, is a case in point. The prose is peppered with commas and full-stops, some of which are admittedly for rhetoric purposes, but in the main they are there to serve q purpose not unlike that for which they are used in English.

Modern Arabic writing is often flawed either because of the excessive use of punctuation or the almost complete lacked of it. This renders Arabic text either too fragmented and abrupt, or disorganized and vague. In some instances it appears that users of Arabic utilize the comma or the full-stop only on the basis of the sentence length or the ability to read 'in one breath'. Obviously more accurate, systematic rules to apply punctuation should be followed, not necessarily in unison with the English punctuation system.

Before concluding my discussion of the importance of punctuation, I shall here refer to a 1969 California appellate court decision, *Anderson v. state Farm Mutual Automobile Insurance Co,* which was reported on in Solan (1993; pp. 29-30). I shall quote a large portion of the case because it will assist later in another discussion.

> *"The Anderson case involved a car owner's lawsuit against her insurance company. In an entertaining fashion, the appellate court explained that Mrs. Anderson had left a California country fair, and had driven off with a Mr. Larson in Mr. Larson's car. The newly met couple arrived at a restaurant where they spent several hours, after which time Mr. Larson excused himself to go to the restroom, never to return. Mrs. Anderson, who had consumed only part of a single drink during this period, testified that she left the restaurant and drove off in what she though was Mr. Larson's car. It was not. Rather, it was Mr. Yacum's Cadillac. While driving Mr. Yocum's car, Mrs. Anderson was involved in an accident, which damaged Mr. Yocum's car. Mr. Yocum sued Mrs. Anderson and won a judgment of about thirteen thousand dollars. Mrs. Anderson tried to collect from State Farm, her own insurer, but the insurance company coverage. She then sued State Farm.*
>
> *In deciding the case, the court rallied on the following portion of Mrs. Anderson's automobile insurance policy:*
>
> *Such insurance as is afforded by this policy … with respect to the owned automobile applies to the use of a non-owned automobile by the named insured .. and any other person or organization legally responsible for use by the named insured .. of an automobile not owned or hired by such other person or organization provided such use is with the permission of the owner or person in lawful possession of such automobile."*

In this case, the court decided that Mrs. Anderson was entitled to compensation from her insurance company, State Farm. In handing down this judgment, the court took into account two matters, one of which was the fact that no comma separates the second class of drivers and the clause starting with 'provided'. The court reasoned that the absence of

any punctuation may be taken as evidence of the intended linkage between the provided clause and the second of the two classes of drivers.

1.1.4 Other Layout Feathers

Other feather that may contribute to the comprehension and proper interpretation of statute and other legal text include the typographic styles and fonts now available in word processors in both English and Arabic. Bold, italic and underlining texts are increasingly becoming accessible to all practicing translators, and accordingly should not use any difficulty. The only matter with has to be mentioned here is the capitalization of specific things or matter in English text and the way Arabic translators have to deal with them. In this respect, we should bear in mind that in English the capital letter at word-beginning is calculated to achieve specificity, a direct reference to an entity. Once this is deduced, other lexical features of Arabic should adequately cover the situation.

1.2 Micro-Structure

In order to develop a good understanding of the legal texts and its role in the overall scheme it is important to understand first the aim of such texts. Many legal experts and translators are puzzled with the seemingly complex patterns and structures of legal texts and wonder whether they could ever be simplified. In fact, the plain English movement constitutes one possible response to what appears to many as an unnecessary complication of laws. There is, however, a reason other than keeping the law as a domain for the specially trained. In explaining the plight of draftsmen, Solan (1993) refers to Benjamin Cordozo, a justice of the Supreme Court of the United States from 1932 until 1938:

> *"The overriding theme of Cardozo's extrajudicial writings is the tension between the need for the law to be both sufficiently flexible to accommodate new cases as they arise and sufficiently rigid to maintain its predictive power. If the law is not flexible enough, then it is doomed to irrelevance and to becoming the source of injustice. If the law is too flexible, then it becomes so unstable that it fails to define with any reliability people's rights and obligations, even in seemingly simple situations. This results in decay of the rule of the law," (Solan 1993; p. 12)*

This is a very important notion, especially as far as translation is concerned, some translators believe that the complex structure could be simplified in translation to facilitate understanding. The direct result of Solan's view, however, is that it should be left only to a presiding judge to determine cases on the base of the statute as it drafted not on the basis of someone else's interpretation. What is felt to be difficult structure should also be understood to be a necessary feature of the statute to allow sufficient flexibility and sufficient rigidness at the same time.

Solan later explains the judge also has the role of a linguist, basically because, given the way it is, the language of the law forces him to be one.

> *"The linguistic issue arise when lawyers for opposing parties attempt to convince a court that a statute or insurance policy or convince a court that a statute or insurance policy or contract or some other legal document should be interpreted to favor their own clients' interests with respect on the proper construal of the particular document. Assuming no disagreement about the events has occurred, it is for the court to decide what should follow from applying the language of the document to the events." (Solan 1993; p. 28)*

1.2.1 Functional of Legal Texts

In describing legislative writing, Bhatia (1994; pp. 136-137) says it is highly impersonal and de contextualised, in the sense that its illocutionary force holds independently of the speaker or originator on the one hand and the hearer or the reader on the other. Bhatia makes the point that since the general function of legislative writing is directive, namely to impose obligations and confer rights, and given that human nature is what it is – trying to wriggle out of obligations and to stretch rights to unexpected limits – legal draftsmen "attempt to define their model world of obligations and rights, permissions and prohibitions as precisely, clearly and unambiguously as linguistic resources permit" (1994; p. 137) in order to guard against human eventualities of this nature. Paradoxically, however, these draftsmen have to guard against eventualities of another type. Since statutes are supposed to cover a universe of human behavior whose limitations cannot be fathomed at the time of drafting the statute – or at any later time for this matter – legal draftsmen have also to attempted to refer to every conceivable contingency, thus their writing is not only precise, clear and unambiguous, but also all-inclusive, flexible and accommodating, in order for judges to exercise their interpreting capabilities with a view to covering eventualities not previously contemplated.

It should be pointed out that in case of ambiguities in the statute, judges have to decide in favor of the accused in criminal matters, or in civil matters against the insurance company, for instance, if the matter relies heavily on the clauses of, say, an insurance policy. I shall deal later with the features that make legal writing clear and unambiguous, as well as how courts decide against the party whose rules are ambiguous. Before doing that, however, it is important to use Gunnarsson's (1984) classification of the legislative provisions and their objectives, as reported by Bhatia.

> *"1. Action rules, which are applicable to only a set of specified descriptions of cases and are mainly meant to impose duties and obligations, to give rights, to prohibit actions, to assign power to certain members or bodies of the executive or other parties, or to state the law or just the penalties imposed on specific actions…*
>
> *2. Stipulation rules, which define he domain of application of a particular act or any section of it,…*
>
> *3. Definition rules, which are applicable to the entire Act and are primarily meant to provide terminological explanation,…" (Bahatia 1994; pp. 138-139)*

To these, another class of rules may be added namely preformative rules, which are usually the enabling clauses at the beginning of a statute. Although strictly speaking they do not form part of the statute itself, they nevertheless constitute part of the legal writing which exists with the main body of the statute. Another comment is that Gunnarsson's study dealt with one particular statute in Sweden, but the classification he presented actually applies not only to statute in general, but also to other legal documents of similar nature, such as contracts, contracts, agreements and the like.

Example of action rules

Text 1.3

> *"Bill shall be granted unconditionally unless the authorized officer or court is of the opinion that one or more conditions should be imposed for the purpose of…"*

Text 1.4

"يتمتع أعضاء مجلس الجامعة وأعضاء لجانها وموظفوها الذين يُنص عليهم في النظام الدّاخلي بالامتيازات والحصانة الدبلوماسية أثناء قيامهم بعملهم"

Text 1.4. A Translation

"*Members of the League Council, as well as members and staff of its committees who are specified in the by-laws shall enjoy diplomatic immunity and privileges during the course of their work.*" *(From the Pact of the League of Arab States; cited in Mansour 1965b; p. 273)*

The similarities between the Arabic and English are striking, despite the extra modifying clauses in the Arabic text and the differing Subject-Predicate configuration.

Examples of stipulation rules

Text 1.5

"*Upon agreement is signified by acceptance of this Agreement by the warehouse employees and the in natures shall be attached hereto and the terms and conditions of this Agreement shall apply there form subject only that the wage increases shall be paid from the first full pay period after the date of Agreement.*" *(Section 21 of an Industrial Agreement between Franklins Ltd and National Union Workers; September 1995.)*

Text 1.6

"ينشر هذا القانون في الجريدة الرسمية ويعمل به اعتباراً من اليوم التالي لتاريخ نشره, يبصم هذا القانون بخاتم الدولة وينفذ كقانون من قوانينها"

Text 1.6. A Translation

"*this Act shall be publisher in the official gazette and shall become effective from the day following the publication date [.T] his Act shall be stamped with the state seal and be implemented as an Act of the State*" *(Article 5, Preamble, Egyptian Bequest Tax Act.)*

Another noticeable feature in the Arabic text is, as foreshadowed earlier, the erratic nature of how punctuation marks are employed. There is no full stop in the Arabic text to separate the tow sentences that make up the Article. The question mark at the end of the Article is totally unjustified. Other articles in the same Act have been found to end in an exclamation mark, a series of dots, or simply no punctuation at all. Although it is possibly inappropriate to make assumption without substantiation, there is apparently a lack of appreciation of the role of punctuation that borders on recklessness.

Examples of Definition Rule

Text 1.7

"*In this Act, except in so far as the context or subject-matter otherwise indicates or requires:*

- *applicant includes a cross-applicant;*
- *appointed day means the day appoints and notified under section 2(2);*

- *de facto partner means:*
  - *in relation to a man, a woman who s living or has lived with a man as his wife on a bona fide domestic basis although not married to him; and*
  - *in relation to a woman as her husband on a bona fide domestic basis although not married to her; …" (Section 3.(1) De Facto Relationships Act 1984; NSW.)*

Text 1.8

"الدعوى هي الحق الذي يعود لكل ذي مطلب بأن يتقدم به إلى القضاء للحكم له بموضوعه."

Text 1.8. A

"A claim is the right to which any applicant shall be entitled to bring to the court for decision." (Article 7, Lebanese Act of Civil Proceedings.)

It has been noticed that whilst definition rules constitute an important feature of the English statute and occupy a specified in them, namely at the beginning of the statute itself, definitions in the Arabic statutes are much less in number and could occur any where in the text. Of note also is the fact that whilst the majority of definition rules in the English statute are meant to provide terminological explanation, those in statute in other language (such as Arabic) go beyond this objective and are treated as "the law itself tout court" (Swales 1981b; p. 109; cited in Bhatia 1994; p. 139). In describing these rules, Swales was referring to clauses which specify, for instance, how a particular offence is defined ad what conditions have to be satisfied for it to be an offence. An example of definition rules that can be classified as "the law itself tout court" can be cited from Articles 50 and 52 of the Lebanese Act of Civil of proceeding 1983:

مادة 50 – الدفاع هو كل سبب يرمي به الخصم إلى رد طلب خصمه لعدم صحته بعد بحث الحق في الموضوع.

مادة 52 – الدفع الإجرائي هو كل سبب يرمي به الخصم إلى إعلان عدم قانونية المحاكمة أو سقوطها أو وقف سيرها.

[back translation]

Article 50 - Defense is any argument resorted to by the responded to dismiss the claimant's claim due to the invalidity of such claim following the investigation of rights at issue.

Article 52 – procedural defense is any argument resorted to by the responded to announce the illegality, lapse or stay of proceedings.

Thus the definition rules in the above examples are not only calculated to improve the comprehension of the law, they constitute an integral part of the law. Performative rules, on the other hand, abound in both English and Arabic legal writing. They have the effect of the performing by merely stating. Take the following example from the Lebanese Act of Civil Proceedings 1983:

Text 1.9

"إن رئيس **الجمهورية**

بناءً على **الدستور**

بناء على القانون رقم 82/36 تاريخ 1982/11/17 (منح الحكومة حق إصدار مراسيم اشتراعية), الممدد بالقانون رقم 83/10 تاريخ 1983/5/21,

وبعد استشارة مجلس شورى **الدولة**,

بناءً على اقتراح وزير العدل,

وبعد موافقة مجلس الوزراء بتاريخ 1983/8/24,

يرسم ما يأتي:

المادة الأولى – يصدر قانون أصول المحاكمات المدنية ويوضع قيد التنفيذ بنصه المرفق بهذا المرسوم الاشتراعي.

المادة الثانية - ..."

Text 1.9. A Translation

The President *of the Republic*

Pursuant to the constitution;

In accordance with Act 36/82 of 17. 11. 1982, conferring on the government the right to make legislative decrees, as extended by Act 10/83 of 21. 5. 1983;

Further to the approval by the Council of Ministers on 24. 8. 1983;

Decrees as follows:

Article 1. The Civil Proceeding Act shall [hereby] be promulgated and become effective as ordered in the text appended to this Legislative Decree.

Article 2. …"

In this example the President is stating, but he is also performing an act, namely promulgating an act making it effective. This performative clause continues to do its role until another Legislative Decree of a similar performative nature annuls the existing one. Other features which are apparent in this example include the length of the sentence, the special layout, and the preoccupation with details and accurate referencing. An equivalent text, and performativity is instead established by the use of the present tense of performative verbs such as 'decide', 'decrees', 'resolves', ect. Another example of performative English n legal text is to be found in the justices' sentencing phrase 'You are hereby convicted and sentence to … of imprisonment. The prisoner may be removed'. As soon as the sentence has been uttered the status of the accused undergoes an instantaneous transformation, which makes him a prisoner forthwith.

1.3 Relational Features in English and Arabic Legal Texts

In describing English legal text and Davy indicate that the province of written legal text is generally reducible to "an underlying logical structure which says something like 'If X, then Z shall be Y' or, alternatively 'if X, then Z shall do Y' " (1969; p. 203). It is appropriate to reproduce here a short text which constitutes part of the NSW Evidence Act 1989:

Text 1.10

"Attestation ect. Before a justice 52A. where by any Act or by any rule, regulation, ordinance or by-law

> *made under any Act, any document is required, authorized or permitted to be attested or verified by, or signed or acknowledged before a justice of the peace, it shall be sufficient for all purposes if such document is attested or verified or signed or acknowledge in any part of His Majesty's dominion outside New South Wales by or before a justice of the peace for that part."*

This paragraph can be reduced to a statement of the first kind. At first reading it may sound confusing or, at best, overlapping. The reduction, however, becomes easier if we consider that X and Z are almost the same – the only deference being a special modifier. Thus X is "… any document is required, authorized or permitted to be attested or verified by, or signed or acknowledged before a justice of the peace, …", and Z is "… such document is attested or verified or signed or acknowledged in any part of His Majesty's dominion outside New South Wales …". It is the underlined part that makes Y clearer to the reader, that is "… it shall be sufficient for all purposes …".

In fact, the simple and straightforward analysis of the Evidence Act with almost a direct similarity to Crystal and Davy's hypothesis that written legal text can be reduced to a logical structure which says 'if X, then Z shall be Y or Z shall do Y'. although valid to a large extent, it would be too simplistic a view to adopt if we were to content ourselves with a hypothesis that reduces all legal writing to one of tow equations. In many ways legal writing, particularly statute language, is analogous to a relational database, where only the main entities (for instance person, vehicle, address) appear on the first screen whenever one tries to access information about only one of these entities, with additional information provided on the screen following each entity (date of birth, registration number, address). A third, deeper screen would tell us more about these entities, such as physical description of the person, the vehicle or the property. There could also be one more screen, the text window, where a narration of the events leading to the linking of he three entities Is provided. Likewise in legal texts, it should be helpful to isolated the main entities which are subject of the article or section or clause, then to try and allocate the conditions (modifiers or modifying clauses) ascribed for each entity, and last but not least try to work out the link that is meant to exist among the ain entities or between any two of them.

1.3.1 Interpretation of the Relations

As stated in various parts of this thesis, in common law countries the law exists not as a rigid piece of writing. It is rather a blueprint for the administration of justice. Of course everybody has hear how laws are never to be breached or ignored, or 'twisted'. Rather than twisting the law, judges as interpreters of the law never hesitate to interpret them in accordance with their understanding not only of legal matters, but also of linguistic analysis. Nothing is sacrosanct when it comes to that. Judges, however, do not do their interpretation in vacuum. Being what it is, common law means that once a rule is established and overcomes legal challenge it becomes binding on all judges who are tasked with deciding similar matters. This includes linguistic matters as we shall see in the following few paragraphs.

1.3.1.1 The Last Antecedent Rule

This has nothing to do with previous cases, as 'antecedent' here dose not refer to similar previous matters. Instead, the reference is purely to the says that a modifying clause of the 'provided' or 'provided that' or similar type is deemed to be modifying only the last entity that precedes it rather all the entities that precede it, although these entities may be linked by 'and' or some other linkage forms.

In 3.21 referred to *Anderson v. state farm Mutual Automobile Insurance Co.* as an example of the importance of punctuation. We saw that the judge decided in Mrs. Anderson's favor despite what seemed to us a straightforward article

of the insurance policy conditions, and that in justifying his decision the absence of commas quoted. Another matter that the judge relied upon was the rule of last antecedent. I shall provide here the text of the article, at the expense of repetition, to facilitate discussion:

> *"Such insurance as it afforded by this policy … with respect to the owned automobile applies to the use of a non-owned automobile by the named insured … and any other person or organization legally responsible for use hired by such other or organization provided such use is with the permission of the owner or person in lawful possession of such automobile."*

In justifying his decision in favor of Mrs. Anderson, the judge reasoned that the "second of the tow classes of potential drivers is the last antecedent, and therefore the owner's permission is not needed when the car is driven by the named insured herself' (Solan 1993; p. 30). The court further reasoned that had the car been driven by someone legally responsible for use by Mrs. Asderson, rather than Mrs. Anderson herself, then the owner's permission would have been required.

The lesson to be learnt from this case as far as translation is concerned is to try and order the entities and their modifiers the same way as they are in the original. Although it sounds pedantic, the fact is that relying on more subtle forms of reference within the text can be elusive no matter how careful we may be.

It can be counter argued that Arabic legal writing is more straightforward and explicit and rarely becomes the subject of interpretation as happened in Mrs. Anderson's case. Whilst this is true to a large extent, the truth also is that Arab legislators and draftsmen never hesitate to do what their counterparts in the English system do, and for the same reason. Let us consider this example:

Text 1.1.1

"ولا يحق للأشخاص المذكورين في الفقرة الأولى, بحال من تخلفهم عن الحضور, بعد دعوتهم حسب الأصول أن يطلعوا على التحقيقات التي جرت بغيابهم."

Text 1.1.1. A Translation

"The person mentioned in the first in the first paragraph, in case they fail to attend following duly inviting them, shall not have the right to peruse the investigations conducted in their absence." (Section 71 of the Act of Criminals Proceedings, Lebanon)

There is no doubt that draftsmen of this clause were aware of the normal way of writing, namely in subject – Predicate form without interrupting it by forcing a long modifier into the structure. They have, however, decided otherwise. It should be stated that, having perused a number of Arabic acts and the full collection of legal texts provided in Mansour (1965a and b), such structures are not as frequent in Arabic legal text as they are in English.

1.3.1.2 Modifiers as Precursors of Rules of Law

Modifiers, or qualifications as Bhatia (1994) calls them, are the essence of legal writing. Most legislative provisions are extremely rich in qualification insertions within their syntactic boundaries, and they tend to make the provisions extremely restricted.

> *"in fact, without these qualifications the legislative provision will be taken to be of universal application and it is very rare that a rule of law is of universal application. The qualifications seem to provide the essential flesh to the main proposition without which the provision will be nothing more than a mere skeleton, of very little legal significance." (Bhatia 1994; p. 147)*

To return to our relation database analogy, what Bahatia is saying is that the legislative provision without its qualification insertions is no more than a first screen with fixed entities – names, but no further description. Bahatia makes a very interesting point, namely that while it is true that qualifications make provisions more precise and clear, they can also promote ambiguity if they are not placed judiciously. In fact, that is the main reason why legal writers "try to insert qualifications right next to the word they are meant to qualify, even at the coast of making their legislative sentence inelegant, awkward or even tortuous" (Bahatia 1994; p. 147). This obviously was the essence of the decision in favor of Mrs. Anderson.

Aesthetics are sacrificed in legal text for the sake of clarity. Bahatia notes that the insertion of qualifications at the points exactly intended by the legislator has meant that syntactic discontinuities frequently occur in legal writing but only rarely In any other genre. This adds to the complexity of an already complex syntactic character of the legislative sentence and causes serious psycholinguistic problems in the processing of such provisions, and consequently in the translation of them:

> *"so far as qualification insertions are concerned, legal draftsmen do not consider ay phrase boundaries sacrosanct, be it a verb phrase …, a noun phrase, binomial phrase or even a complex prepositional phrase." (Bhatia 1994; p. 148)*

Bhatia gives examples of noun phrases, binomial phrases and complex prepositional phrases which are made discontinuous through the use of such qualifications, the like of which are very rare in Arabic legal texts.

1.3.1.3 Binomials and Multinomial

Another feature that is very common in English legal text is the frequent use of binomials and multinomial, which may be explained, as already stated, in terms of the desire to achieve a high level of synonyms or near synonyms" (Emery 1989; p. 90). The text to follow represent the first registered grant of land in New South Wales given to ex-convict James Ruse, and was signed by Governor Arthur Phillip. It is reproduced here because of its historical value besides its richness in the various features of English legal texts, including the use of several binomials and one multinomial:

Text 3.1.2

> *"Whereas full power and authority for granting lands in the Territory of new South Wales, to such persons as may be desirous of becoming settlers therein is vested in me, his Majestys Captain General and Governor in Chief in & over the said Territory and its Dependencies, by His Mahestys Instructions under the Royal Sign Manual Bearing date respectively the twenty fifth day of April, one thousand seven hundred and twenty fifth day of April, one thousand seven hundred and eighty seven, and the twentieth day of August, one thousand seven hundred and eighty nine.*
>
> *In pursuance of the power and authority vested in me as aforesaid, I do by these Presents give & grant for ever Thirty Acres of Land, in One Lot, to be known by the name of Experiment Farm, laying on the*

south of the Barrack Ponds at parramatta, the said Thirty Acres of Land to be had & held by him the said James Ruse, His Heirs and Assigns, free from all Fees, Taxes, Suit Rents & other acknowledgements, for the space of Ten years, Form the date of these presents; provided that the side James Ruse, His Heirs or Assigns, shall reside within the same & proceed to the Improvement & Cultivation thereof, such Timer as may be growing or to grow hereafter upon the said Land, which may be deemed fit for Naval Purposes, to be reserved for the use of the Crown; & paying an annual Suit Rent of One Shilling after the expiration of the Term or Time of ten years before mentioned.

In Testimony whereof I have hereunto set my Hand & the Seal of the Territory at Government House, Sydney day of February in the year of our Lord One Thousand seven hundred & ninety." (underlines and italics are mine.)

Apart from the seven binomial and one multinomial (underlined), the use of portmanteau type words (italicized) are also noted in this text, together with the elaborate use of capitalization, sometimes erratically or unnecessarily, perhaps as a means of added formality and /or referential clarity and precision. In some instances these binomials have been found to be of deferring rather than similar nature: 'directly or indirectly', 'bough or sold', 'in cash or in kind' and so forth. Some others are of a more complex nature, for instance 'emanating from this provision or relating to the regulations'. In fact, these and others can be grouped as qualifications as well, including the tendency to insert them where they should belong thus creating a discontinuation of the type discussed in the previous section.

Since the use of binomials in the English legal texts is calculated to create universality of application, the corollary is that any translation should aim to create an equivalent universality through the proper positioning of such expression in the translated text. Of note is that Arabic is a language that readily accepts this feature. Indeed, binomials and multinomial abound in all Arabic texts, almost without exception, including legal texts. It could be that stylistic techniques in Arabic require more generous use of binomials, such as in journalistic, literary and religious registers than in English (Qadi 1987; p. 67. Quoted in Emery 1989). Readers of Arabic are sometimes 'put off' by the frequent use of binomials, which are sometimes nothing but very close synonyms which add nothing much to the meaning. While this practice can be understood in some genres as a tool of enhancing the aesthetics of the text, in many other instances it can simply be nothing more than futile tautology. It may well be that the practice perhaps echoes "a more florid earlier style of the language" (Emery 1989; p.9).

The Arabic text which will follow is a legal document that belongs to the legal formularies group, and was written by a drafter in the city of Safad, in north Palestine, during the Ottoman rule shortly after the English deep of grant reproduced above, but also because it is one of the very few such Arabic document to survive from that period. The manuscripts are kept at the University of Leeds and were investigated by Ebied and Young (1976).

Text 1.1.3

"سبب تحريره وموجب تسيطره هو انه قد بعنا إلى فلان الفلاني ما هو لنا متصلاً بالإرث الشرعي وهو البستان المعروف بالبستان الفلاني الكاين في المحل الفلاني – بعناه اياه فاشتراه منّا بثمن قدره وبيانه من الغروش الأسدية الرايجة السلطانية المتعامل بها يوميذ كذا وكذا. بعناه البسان المذكور بالثمن المسفور بيعاً صحيحاً شرعياً قاطعاً ماضياً ممضياً لا شرط فيه ولا فساد ولا رجع ولا معاد بل بيع الإسلام وصحة نفوذ الأحكام, وقبضنا منه الثمن المرقوم قبضة واحدة في مجلس واحد فصار البستان المذكور ملكاً للشاري المحرر يتصرف بها

كيفما يشاء وأراد, وحدوده ... وقد أبرأنا ذمته وأبرأ ذمتنا من كل مافي هذا البيع والشرا من الغبن الفاحش والاغترار والإكراه والإجبار..."

Following is a possible translation, by Ebied and Young, which will be provided now for the sake of facilitating discussion:

Text 1.1.3 A

"The reason for the engrossing of this [document] and its being committed to writing is that we have sold to … property accruing to us by lawful inheritance, namely the orchard known as the … orchad situated in … (name of place). We have sold it to him and he has purchased it from us for a price of the state amount of … in current imperial Asadi piaster, being legal tender at the present time.

We have sold him the aforementioned orchard for the price stated, through a valid, lawful, definitive, effectual, ratified sale, containing no stipulation or defect or [right of] withdrawal or recession, but being an Islamic sale and valid with regard to the effect of its provisions.

We have received the property of the aforementioned purchaser. He may disposed of it at any way he desires or wished.

Its boundaries are …

We have acquitted him, and he has acquitted us, of all criminal fraud, deception, duress and compulsion in this sale and purchase …" (Ebied & Young 1967; pp. 13 & 45 respectively)

There are twelve binomial expressions in this Arabic formulary, some of which are more complex than those found in the English Deed of Grant provided above. Although part of the complexity, and perhaps the hidden aspect of binomialism, is due to the effect of translation, the point is that both English and Arabic legal texts share this feature. Other features of this Arabic text include the use of homeotelenton [سجع] (the occurrence in Arabic is the same sound at the end of adjacent or closely connected words) such as in البستان (*sababu tahririhi,wa mujibu tastirihi*), سبب تحريره وموجب تسطيره (*al-bustanu al-mażkour bi al-thamani al-masfour)*. And المذكور بالتمن المسفور الإسلام وصحة نفوذ الأحكام (*al-islam wa sihati nufużi al-ahkam*). It is to be noted that both homeotelenton and binomialisation are features of an earlier era of Arabic, and Arabic these days, the second continues to influence many writers and writings, not necessarily only legal. An unrelation point to be made about the Arabic text is that is constitutes only one paragraph, which is not reflected in the English translation.

1.3.1.4 Modality

Another aspect of legal text that gives rise to problems in their interpretation for the application as well as in their translation is the question of modality, since statutes and other legal texts seek to create or prohibitionary function of the text become very important. Not all modals, however, relate to this function. Holliday (1985; p. 86) talks about two kinds of modality: moralization (usually referred to as modality) and modulation. The former deals with the varying degrees of probability and usually, while the latter deals with the various degrees of obligation and inclination (Maley 1994; p. 46). While modals of the second category are usually found in statutes and ether legal documents (contracts, deeds of sale, insurance policies and so forth), those in the first category are often to be found in judges' orders and judgments, as they are more suited for carriage of explicatory and argumentative, that is mostly subjective, statements.

In both statutes and judicial texts modals of both types many not be necessary in some parts of the text at least. When a judge delivers a judgment the part which contains the facts of the case dose not usually have any modals, as it is often a reproduction of the facts as they took place. It is only when a judge moves to justify a judgment that moralization I used, and when references are made to specific provisions (as well as when the judge's final judgment is stated) that modulation is used. Likewise in statutes, there are occasions when modals are not needed and an ordinarily inflected verb for tense is sufficient,

Text 1.1.4

"3A. A written notice may be laid before a House of Parliament by a Minister or by the Clerk of that House.

4. Failure to lay a written notice before each House of Parliament in accordance with this section dose not affect the validity of a statutory rule, but such a notice must nevertheless be laid before each House." (Interpretation Act; 1987)

In clause 3A the emphasis is not on the 'laying of the written notice' itself, but rather on the categories of people who are *acceptable* to lay such notice before a House of Parliament. This is made clearer in clause 4 which makes it imperative that the written notice *must* be laid before the House regardless of whether it is laid by a person of either category (Minister or Clerk of that House). Proper translation, depending primarily on the correct positioning of the equivalent of 'may' in the Arabic translation. 'May', 'use' and 'must' in the above two clauses respectively convey possibility, fact and obligation.

While 'may' and 'must' in English legal text can be clearly understood to mean what any user of English understand them to mean in any other text, another modal, 'shall', continues to pose a level of difficulty in both interpretation of clauses containing it and in the translation of such clauses 'shall' has traditionally played a role not unsimilar to that of 'must'. Thus is good or service provision contracts 'the contractor shall be responsible for the provision of …" simply means "the contractor must provide …". More recently, probably due to some unnecessary extension of the use of this modal to situations that do not call for such use (consider 'does' in clause 4. above), 'shall' has lost some of its imperative power. Judges, however, continue to deal with it in exactly the same manner as they always have, when it is in fact intended to create an obligation, and likewise refers to its unnecessary imposition on the text when it is not justified. Perhaps it is order to refer now to an appeal (*NRMA Insurance Limited v McCarney*) that was heard by the supreme Court of new South Wales (CA 371/88, DC15430/83) on 22 October 1992. the clause in question as well as the justification to grant the appeal shed some light on the importance of modality, as well as on the difference between modals and ordinarily inflected verbs.

The case which was initially dealt before the District Court involves an insurance claim declined by NRMA Insurance Limited on the basis that the clamant, McCarney, was under the influence of intoxicating liquor at the time of the accident which gave rise to the claim. The trial judge decided in favor of the claimant, notwithstanding evidence that such claimant was in fact under the influence of intoxicating liquor. The claim was thus allowed on the basis of, inter alia, s 4E (13) (a) of the traffic Act 1909, which provides: file no. 1

Modality (or rather modulation) in Arabic legal text do not always allow for as clear understanding as it in English. This is due to the overlapping use of some lexical items in the construction of legal and other text sentences. A reader of an Arabic statute should first attempt to understand the general import of the paragraph and the real intention

of the drafter. This is not always an easy task. The difficulty dose not arise from the use of the equivalent of 'must' and 'may' in Arabic, as these are usually of universal application throughout Arabic text, legal and non-legal. It rather lies in whether the intention is 'shall', with an obligation element, or a present tens statement. The following clauses are taken from an agreement concluded between Egypt and Jordan before 1958. they are contained in Mansour (1965b; p. 204). May English translation follows.

CONCLUSIONS

The researcher attempts to show that any legal text follows a standard skeletal plan, and he tackles the problem that the translators, and indeed all readers, may encounter with legal texts. Besides the comparison between Arabic and English legal texts layout.

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