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TYPES OF LEGAL TEXTS

FADL ALLAH ISMAIL ALI

Associate Professor, College of Languages and Translation, Imam Mohammed Bin Saud Islamic University,
Riyadh, Saudi Arabia

ABSTRACT

In this paper, the writer attempts to describe legislative writing. He tries to point out its general function and its role in human life. Moreover, the writer defines these sorts of writings in order to give an ordinary reader some idea of these writings. The method adopted is to site an English text and its Arabic translation as found in published work. The Arabic translation itself is followed by its English back translation to show the differences in the Arabic translation from the original English text.

KEYWORDS: Moreover, English Text, Arabic Translation, Arabic in Arab Universities

1. INTRODUCTION

This paper is an attempt to make some observations on the legal texts and to facilitate and remove ambiguity in legal writings to ordinary readers. It falls in the following divisions:

1. Classification of legislative provisions and objectives.

    1.1 Action Rules.

    1.2 Stipulation Rules.

    1.3 Definition Rules.

2. Elements features of style in legal Drafting.

3. Conclusion.

Since these writings 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 that matter- legal draftsmen also have to attempt to refer to every conceivable contingency. Thus, their writing does not only have to be precise, clear and unambiguous, but also all-inclusive, flexible and accommodating, in order that judges may exercise their interpreting capabilities with a view to covering eventualities not previously contemplated.

It should be pointed out that in the cases of ambiguities in a statute; judges have to decide in favor of the accused in criminal matters, as well as civil matters. Therefore, demonstration will be made of the features that make legal writing clear and unambiguous, as well as how courts decide against the party whose rules are ambiguous.

1. Classification of Legislative Provisions and Objectives

It is necessary to use Gunnarsson's (1984:19) classification of the legislative provisions and their objectives, as reported by Bhatia (1994: 138-139)

> ***"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 the 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,…"*

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. Besides, one must take in account that Gunnarsson's study dealt with only one particular statute in Sweden. Nevertheless, the classification he presented actually applies not only to statute in general, but also to other legal documents of similar nature, such as contracts, agreements and the like.

Example of Action Rules

Text 1

> *"Bail 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 2

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

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: 273)*

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

Examples of Stipulation Rules

Text 3

> *"Upon agreement as signified by acceptance of this Agreement by the warehouse employees and the Ingleburn warehouse, signatures shall be attached hereto and the terms and conditions of this Agreement shall apply there from subject only that the wage increase 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 4

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

Translation

"This Act shall be published in the official gazette and shall become effective from the day following the publication date. This Act shall be stamped with the state seal and be implemented as an Act of the state." (Article 5, Preamble, Egyptian Bequest Tax Act.)

Here again, the similarities in the function of the text are noticeable. Another noticeable feature in the Arabic text, is foreshadowed earlier, the erratic nature of how punctuation marks are employed. There is no full stop in the Arabic text to separate the two sentences, which make up the Article, as in the translation 4 the question mark at the end of the Article is very unjustified. Other articles in the same Act end in exclamation marks, a series of dots, or simply no punctuation at all. Although it is possibly inappropriate to make assumption without substantiation, lack of appreciation of the role of punctuation that borders on recklessness.

Examples of Definition Rule

Text 5

"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* appointed *and notified under section 2(2);*
- *De facto partner means:*
  - *In relation to a man, a woman who is 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, a man who is living or has lived with 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 6

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

Translation

"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 some definition rules constitute an important feature of English statutes and occupy a specified position in them, namely at the beginning of the statute itself, definitions in 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 English statutes are meant to provide terminological explanation, those in statutes in other languages (such as Arabic) go beyond this objective and are treated as "the law itself tout court" (South Wales 1981: 109; cited in Bhatia 1994:139). In describing these rules, South Wales was referring to clauses, which specify, for instance, how a particular offence is defined and what

conditions have to be satisfied for it to be an offence. An example of definition rules that can be classified as "the laws 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 respondent 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 respondent to announce the illegality, lapse or stay of proceedings.

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

Text 7

"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 -..."

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 advice from the State Consultative Council;

Pursuant to suggestion of the Minister for Justice; and

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

Decrees as follows:

Article 1. The Civil Proceedings 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 not only stating, but he is also performing an act; namely, the promulgation of an act making it effective. This performative clause will continue its role until another Legislative Decree of a similar performative nature annuls it. Other features, which are apparent in this example, include the length of the sentence, special layout, preoccupation with details and accurate referencing. An equivalent for the portmanteau word (hereby, in the Translation) is not in the original Arabic 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 in legal texts is to be found in the justices' sentencing phrase 'You are hereby convicted and sentenced 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.

2. MODIFIERS AS PRECURSORS OF RULES OF LAW

Modifiers, or qualifications as Bhatia (1994:14) 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 and it is very rare that a rule of law is of universal application. Moreover, these qualifications seem to provide the essential flesh to the main proposition without which provision will be nothing more than a mere a skeleton, of legal significance. Moreover, these qualifications make provisions more precise and clear, and they can promote ambiguity if they are not placed judiciously. Aesthetics and elegant style are sacrificed in legal texts for the sake of clarity. The writer notes that the insertion of qualifications at the points exactly intended by the legislator means that syntactic discontinuities frequently occur in legal writing, and 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 any phrase boundaries sacrosanct, be it a verb phrase …, a noun phrase, binomial phrase or even a complex prepositional phrase." (Bhatia 1994: 148)

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

2.1 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 precision. Binomial and multinomial

expressions are "collocations of synonyms or near synonyms" (Emery 1989: 9) or sequences of "two or more words or phrases belonging to the same grammatical category having some semantic relationship and joined by some syntactic device such as 'and' or 'or' "(Bhatia 1984: 90). The following text represents the first registered Deed of Grant of land in New South Wales in Australia given to ex-convict called James Ruse, and was signed by Governor Arthur Phillip. It is reproduced here because of its historical value as well as its richness in the various features of English legal texts, including the use of several binomials and one multinomial:

Text 8

> *"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 Majestys 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, from the date of these presents; provided that the said 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, this day of February in the year of our Lord One Thousand seven hundred & ninety." (underlines and bold are mine.)*

Apart from the seven binomials and one multinomial (underlined), the use of portmanteau type words (bold) are also noted in this text, together with the elaborate use of capitalization, sometimes haphazardly 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 natures: 'directly or indirectly', 'Bought 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'.

Since the use of binomials in 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 binomial, such as in journalistic, literary and religious registers than in English (Qadi 1987: 67. Quoted in Emery 1989:45). 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 legal formularies group. It was written by a drafter in the city of Safad, in north Palestine, during the Ottoman rule, shortly after 1850.It has been selected for two reasons, one it belongs to a period not too long after the English deed of grant reproduced above. The other, it is one of the very few such Arabic documents to survive from that period. The manuscripts are kept at the University of Leeds and were investigated by Ebied and Young (1976).

Text 9

"سبب تحريره وموجب تسطيره هو انه قد بعنا إلى فلان الفلاني ما هو لنا متصلاً بالإرث الشرعي وهو البستان المعروف بالبستان الفلاني الكاين في المحل الفلاني – بعناه إياه فاشتراه منّا بتمن قدره وبيانه من الغروش الأسدية الرايجة السلطانية المتعامل بها يوميذ كذا وكذا. بعناه البستان المذكور بالتمن المسفور بيعاً صحيحاً شرعياً قاطعاً ماضياً ممضياً لا شرط فيه ولا فساد ولا رجع ولا معاد بل بيع الإسلام وصحة نفوذ الأحكام, وقبضنا منه التمن 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 is reproduced here to illustrate the points in the discussion.

Translation

"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 … orchard 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 from him the stated price in one transaction on one occasion, and the aforementioned orchard has become the property of the aforementioned purchaser. He may dispose of it at any way he desires or wishes.

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: 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 (Text 8). Although part of the complexity, and perhaps hidden aspect of binomialism, is due to the effect of translation. Both English and Arabic legal texts share this feature. And features of this Arabic text is 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 سبب تحريره وموجب تسطيره (*sababu tahririhi,wa mujibu tastirihi*), البستان المذكور المسفور بالتمن(*al-bustanu al-mażkour bi al-thamani al-masfour).* And الإسلام وصحة نفوذ الأحكام (*al-islam wa sihati nufuzżi al-ahkam*). It is to be noted that both homeotelenton and binomialisation are stylistic features of an earlier era of Arabic. Whereas the first feature has lost its appeal to contemporary writers and speakers of Arabic, the second continues to influence many writings, not necessarily only legal. An unrelated point that may be made about the Arabic text is that is constitutes only one paragraph, which is not reflected in the English translation.

2.2 Modality

Another aspect of legal texts is the source of problems in their application as well as their translation is Modality. Not all modals, however, relate to this function. Halliday (1985: 86) talks about two kinds of modality; namely, modalization (usually referred to as modality) and modulation. The former deals with the varying degrees of probability and usuality, while the latter deals with the various degrees of obligation and inclination (Maley 1994: 46). While modals of the second category are usually found in statutes and other 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, may not be necessary in some parts of the text at least. When a judge delivers a judgment, the part that contains the facts of the case does not usually have any modals. It is often a reproduction of the facts as substantiated by evidence. It is only when a judge moves to justify a judgment that modalization is used. When references are made to specific provisions, (as well as when the judge is final judgment is stated) then modulation is used. Likewise, in statutes, there are occasions when modals are not needed and an ordinarily is sufficient, such as in the following text.

Text 10

*"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 does 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 understanding of these two clauses would enable a similarly proper translation, depending primarily on the correct positioning of the equivalent of 'may' in the Arabic translation. 'May', 'does' and 'must' in the above two clauses respectively convey possibility, fact and obligation.

While ‘may’ and ‘must’ in English legal texts can be clearly understood to mean what any user of English understands them to mean in any other text, another modal, ‘shall’, continues to pose a level of difficulty in both interpretation of clauses containing it. In the translation of such clauses ‘shall’ has traditionally played a role not similar to that of ‘must’. Thus in goods 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, which 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 in order to refer now to an appeal (*NRMA Insurance Limited v Mc Carney*) 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 made by NRMA Insurance Limited on the basis that the claimant, Mc Carney, 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 based on, *inter alia*, s 4E (13) (a) of the traffic Act 1909, which provides:

Text 11

> *"The fact that a person has undergone a breath test or was submitted to a breath test analysis, the result of a breath test or breath analysis … shall not for the purposes of any contract of insurance, be admissible as evidence of the fact that the person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising in this subsection precludes the admission of any other evidence to show any such fact".*

The appeal judge argued that the paragraph provides relevantly that the matters referred to (that is breath test analysis and the results thereof) "shall not … be admissible as evidence of the fact that the person was at any time under the influence of … intoxicating liquor". The appeal judge further did not dispute the effect of 'shall be' as a conclusive prohibition for the judiciary to use the matters referred to as evidence. The appeal judge, however, noted that the paragraph does not make such evidence completely inadmissible in insurance cases. Yet, this finding was not based on attributing any lesser weight to 'shall be' than had been intended by the legislature. In fact, he argued that such evidence would have been completely inadmissible had the paragraph finished with the words "shall not, for the purposes of any contract of insurance, be admissible as evidence". He found that fact that the paragraph does allow the admission of any other evidence to show any such fact, namely that "that person was at any time under the influence of …" would allow a party to provide such evidence. The appeal judge did not make any reference to 'precludes', as it simply means what it says with no modality involved in it. Thus, it becomes a fact which has to be treated in the same manner as any reasonable user of English would do. Modality (or rather modulation) in Arabic legal texts does not always allow for as clear an understanding as 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 does not arise from the use of the equivalent of 'must' and 'may' in Arabic, as these are usually of universal application throughout Arabic texts, legal and non-legal. It rather lies in whether the intention is 'shall', with an obligation element, or a present tense statement. The following clauses are taken from an agreement concluded between Egypt and Jordan before 1958. They are contained in Mansour (1965b; p. 204). My English translation follows.

Text 12

1. *على سلطات الطيران المدني لدى كل من الطرفين المتعاقدين أن تخطر سلطات الطيران لدى الطرف المتعاقد الآخر...*
2. *يجوز لسلطات الطيران لدى أحد الطرفين المتعاقدين...*
3. *تسري القوانين والقواعد المعمول بها لدى أحد الطرفين المتعاقدين...*
4. *يجب ألاّ تسيء المؤسسات المعينة من أي من الطرفين المتعاقدين استعمال الحقوق لها أثناء تشغيلها الخطوط الجوية..."*

- *"The civil aviation authorities of either contracting party must notify the aviation authorities of the other party …*
- *The civil aviation authorities of either contracting party may …*
- *The rules and regulation in force by either contracting party shall apply …*
- *Organizations appointed by either contracting party must not abuse the rights assigned thereto during the operation of the airlines …"*

The modal 'must' is expressed in Arabic in these examples in the two lexical items by يجب and على, while 'may' is expressed as يجوز Other Arabic equivalents of 'may' that have been identified in various legal texts include, يمكن, قد, بالإمكان, يجوز, من الجائز. On the other hand, other equivalents of 'must' in Arabic are more limited in legal texts. Thus, the verbs in the present tenseينبغي and يتعين have been found in a very small number of the Arabic legal texts consulted, including statutes. While the situation with 'may' and 'must' is quite straightforward and does not present any serious difficulty, translators would more often have to carry out a limited text analysis to define the nature of some seemingly 'innocent' verbs, such as تسري in the above example.

A translation decision has to be made as to whether this verb simply means 'applies' or 'shall apply'. Analysis would reveal that the paragraph does not refer to a simple fact, but rather to either an obligation for the contracting partly to apply such laws and regulations or an allowance for it to do so. In both cases, the use of 'shall' is more justified, a decision that is supported by perusing similar stipulations in original English texts. In many cases, the modal 'shall' is translated into Arabic as "يكون" or one of its derivatives. It is well established in Arabic legal writing that this verb implies an obligation; thus, … تكون الشركة مسئولة عن would become 'The company shall be responsible for …". Likewise, تتحمل الحكومة الكويتية تكاليف إزالة الألغام والعبوات المتفجرة من موانئها البحرية would translate, as 'The Kuwaiti government shall bear the cost of removing all mines and explosive charges from its seaports'. Another tool used in Arabic to indicate obligation in the sense of 'that' is the very common particle *inna* (إنّ). When late Egyptian president Gamal Abdul Nasser declared: إن حرية الكلمة هي المقدمة الأولى للديموقراطية, not many people understood it to mean that freedom of expression should be granted to the people of Egypt. Rather it was thought of as a statement of fact, a slogan, as it were, since people continued to quote it, in good

faith, for many years. Had the Egyptians then thought of it as a commitment, a pledge, by their ruler to grant them a right they would have invoked that presidential statement, in the sense of a pledge by the highest executive authority of their country, to question many matters they were reportedly dissatisfied with. A direct example can be found in the Lebanese Act of Criminal Proceedings, of which a part is quoted as follows:

Text 13

"المادة 409: إن الأمر بتسليم الخلاصة أو النسخة يبرئ ذمة الشخص الموجودة لديه تجاه ذوي العلاقة بها."

A possible translation of this part of Article 409 would be: "An order to deliver the summary or the copy shall exonerate the person who is in possession of such summary or copy vis-à-vis the persons concerned therein". Following is another example, also taken from the same source:

Text 14

"المادة 10: إن موظفي الضابطة العدلية مكلفون باستقصاء الجرائم وجمع أدلتها والقبض على فاعليها وإحالتهم على المحاكم الموكول إليها أمر معاقبتهم."

Translation

> *"Justice police officers shall be assigned the task of investigating offences, gathering evidence, for their arresting and referring offenders to the courts charged with sentencing them."*

The only difference between the two examples is that in the former particle إن refers to the verb يبرئ while in the latter it refers to a noun مكلفون, [literally means 'people assigned to do something'; the translation does not bring this out]. The similarity, however, is that in both examples the nominal sentence marker is redundant and can be omitted without any loss of meaning or performative power. In fact, this points to another meanings of 'shall' in Arabic legal texts, that is when the sentence is nominal with no marker. The statutes reviewed provide many examples. In this respect, there is a strong resemblance to the verbal sentences. Two preformative verbs that are occasionally used in Arabic to indicate the power of obligation carried by 'shall' are يتم and يجري. They are to be avoided, however, as there is no evidence that original Arabic legal texts favor them. It is believed that their use has originated in Arabic legal translations undertaken by translators who lacked appropriate training in the subject. The frequent use of these two verbs, and in many instances unnecessarily, seems to have originated from the need to avoid ambiguity usually associated with the verb used in passive verb constructions, especially when it was difficult to put the implied vowel marker, *dammah*, above the first letter of the Arabic verb. Thus تم تنفيذ حكم الإعدام instead of نُفِّذ حكم الإعدام. The structure in some cases is totally irrelevant and tautological. Consider جرى تنفيذ المشروع [the implementation of the project has been done], or وقد تم إعداد مسودة البيان [the preparation of the statement has been done], instead of نُفِّذ المشروع [the project has been executed] and أُعدت مسودة البيان [the draft statement has been prepared] respectively. However, with the rapid spread of Arabic word processors, the need for such ploy is constantly diminishing.

2.3 Conjunctions, Disjunctions and Combinations

Related to the frequent use of binomials and multinomials in legal texts is the question of the conjunctive 'and' and disjunctive 'or' and their combinations. There is also a link between 'and' and 'or', on the one hand, and punctuation on the other. The reference is to instances when one has a series of related lexical items in English legal texts, where each pair of such items are separated by a comma, with a disjunctive or conjunctive tool inserted before the last item. Let one

first consider the following example:

Text 15

The Company shall provide at the construction site all equipment, machinery, plants, supplies and tools.

The commas used in this sentence have only one role to play, which is conjoining all these items with a view to create an all-encompassing obligation for the company. Arabic translations of such text have been found to suffer from the irrational desire of translators to emulate the linking system in English, symbolized in this short text by commas. In many cases, the translation rendered would be in the following form:

Translation

تقدم الشركة في موقع الإنشاء جميع المعدات، الآلات، المعامل، اللوازم، والأدوات.

Translation students, instructed in the proper use of the comma in Arabic, and the preference for the use of و 'wa' and in place of the comma in their Arabic translations, have found it hard to do away completely with the English linkage tool. Following is an example:

Translation

تقدم الشركة في موقع الإنشاء جميع المعدات، والآلات، والمعامل، واللوازم والأدوات.

It is not clear whether translation students, or many other Arabic writers for this matter, prefer these days the use of the comma instead of 'wa' due to their exposure to Western linkage systems. There is no doubt that 'wa' has misused in Arabic, in the sense that it is used when some other connective is more appropriate. It is probably a subconscious effort by Arabic writers to avoid this word and the stigma attached to it, a stigma that has created by various writers who tried to compare the stylistic features of Arabic with those of Western languages.

Of note is that the frequent use of 'and' as a connector is not peculiarly an Arabic feature; it is shared by other Semitic languages. In discussing the translation of the Old Testament, Wilson (1958) refers to Old Hebrew as an influencing factor in the translation. Although he declares that "Old Hebrew poetry had a richness and a sensuous quality appropriate to a warm and passionate land", he nevertheless maintains that it had an "almost childish way of joining its sentences together" (Wilson 1958: 56).

In rebutting such claims against Arabic, Sa'adeddin makes the point that they had been made without any acknowledgement of the fact that "the linguistically – overt Arabic linkage system and the notationally – codified Western systems are radically different methods of symbolization, accomplishing more or less different functions ", and that the Arabic linkage system symbolizes "junction by means of lexical items which explicitly transmit the coherence of the text to native Arabic speakers, who perceive the import of those items so intuitively that they seldom think of them" (sa'adeddin 1983: 142 -143). Although Wilson and Sa'adeddin refer mostly to 'and' as a sentence connector, the same argument for and against its use applies equally to its employment as a word connector. Accordingly, despite the importance of punctuation in any type of writing, in both Arabic and English, it is the lexical connector 'wa' that should be used in the above example rather than the comma, which would create discontinuity in the text and render it artificially punctuated. Such artificiality would be able to be picked up *intuitively*, to use Sa'adeddin's word, by native Arabic speakers. The preferred translation would then be:

Translation

تقدّم الشّركة في موقع الإنشاء جميع المعدات والآلات والمعامل واللوازم والأدوات

Another matter that relates to the use of 'and' and 'or' is the question of how they are interpreted by the judiciary. It should be remembered that it is interpretation by judges of statutes and other legal texts that makes the work of translators a constant challenge, as they have to keep abreast of what such interpretations are. This is both a problem and a challenge, in view of the fact, that approximately 40% of the work of the courts in Australia and England requires a ruling upon what particular paragraphs or words of some legislative instruments really mean (Pearce 1974: 1). In this respect, judges assume the role of linguists and decide cases on this basis, in conjunction with the intention of the legislature, as they understand it to be. On the question of 'and' and 'or', for instance, the Federal and State courts of New York decided that they may generally be "construed as interchangeable when necessary to effectuate legislative intent" (Solan 1993: 45).

Solan elaborates on the issue by quoting the commentator on which statute as observing that drafters of statutes often make mistakes in the use of the word 'and' when 'or' is intended, or vice versa and that the popular use of these two words is "notoriously loose and inaccurate, and this use is reflected in the wording of statutes". (Solan 1993: 45) The commentator adds that when a judge realizes that a piece of legislation has been flawed because of such inappropriate use of 'and' or 'or', he or she will make the necessary change in the statute so that it can then conform to the legislative intent. This in itself is not something with what translators of legal texts have to concern themselves, although what follows is that translators should maintain their alertness to identify all conjuncts. That is because the outcome of a case can be decided only on satisfying all the conditions, for instance, or since, for instance, in a contract of services the contractor is responsible for some items to the exclusion of others. Easy that may seem when, Solan (1993: 50) gives as an example a paragraph from the United States Comprehensive Crime Control Act of 1984, which permits the United States government to seize property, which can be proven to be derived from narcotics sales. The paragraph ends with 'without the knowledge or consent of that owner'. The question here is whether the legislature meant 'without the knowledge *and* without the consent of that owner' or 'without the knowledge *or* without the consent of the owner'. Although it can be said that purely linguistically the first interpretation would be the accurate one, an alternative view would favor the second. In narcotics case, the first judge hearing the case passed his judgments on the basis with first interpretation. A second judge, later on decided that the second alternative would be the more accurate interpretation. The case was eventually decided in favor of the linguistically sound interpretation and on the grounds a disjunctive reading of "or" would lead to an absurd result. It is interesting to conclude this section by stating that the Queen's Bench, in the matter of *Regina v. Oakes* 1959 (Queen's Bench Reports 2), has found that "and does any act" must be read as "or does any act" (Official Secrets Act 1920). This is at odds with the finding by Blackburn j.: "The proposition that 'and' can sometimes mean 'or' is true neither in law nor in English usage". Another matter that occasionally gives rise to problems for Arabic translators is the use of 'and/or' as one unit, especially when it is positioned at the end of a list type sentence as in Text 15. In the case of only two items separated by this conjunction/disjunction a rule was devised by the Arabic translators working for Aramco (the Arabian American Oil Company) in the 1970s, namely to spread it among its constituents. Thus: "The Contractor shall provide a car 'and/or' a truck for the site inspector" would become يقدم المقاول سيارة أو شاحنة أو كلا المركبتين لمفتش الموقع. The back translation into English is : "the Contractor shall provide a motor car or a truck or both vehicles to the site inspector". It is believed, however, that the translation of this sentence is slightly flawed, despite its simplicity.

The flaw does not arise from interpreting the meaning of 'and/or', but from the addition of the word 'المركبتين',

which was not in the original text. Whilst it is true that the meaning has not changed in translating this sentence, the English back translation would definitely give rise to misinterpretation of the clause, given that the word 'المركبتين" (i.e.' both vehicles') does not explicitly refer to the car and truck mentioned in this clause. It has already been explained that precision of legal texts is based, among other things, on the quality of references. This is believed is lacking in this translation. The acceptable translation should read as follows (back translated): "The Contractor shall provide a motor car or a truck or a car and a truck for the site inspector". This is a legally acceptable translation because it complies with a judicial interpretation given in the matter of *Gurney v. Grimmer* (1932) (reported in 38 Commercial Cases 7), where it was stated that "a clause in a charter party that the ship is to proceed to A and/or B at charterer's option means that the charterer may send the ship to A alone or B alone or to A and to B". It is interesting to note, however, that other judges have criticised the use of 'and/or' in legal texts. Thus in *john v. name* (1956 Law Reports Appeal Cases 890). Lord Reid observed that 'and/or' is not yet part of the English language.

CONCLUSIONS

In this paper, the writer attempted to show that in a legal text, concern should be not only with mere rhetoric and general principles, but also with structure of layout. He provided specific rules to cover all aspects of the drafters' work, from sentence structure to the layout of a full statute. Squires (1982) thus instructs legal drafters to open a sentence with its subject, place transitional words near the subject, keep subject and verb close together and to use the subject-verb-object pattern. She further warns against split infinitives unless ambiguity or awkwardness result from leaving them intact, against ambiguous modifiers at the end of a sentence (although any modifier can in fact be considered ambiguous and open for interpretation by courts), and to end sentences swiftly and effectively, as soon as one has completed a subject-verb unit. At the macro-structure level, those sentences should not exceed 25 words long; that only one point is to be made in each sentence. Moreover, such sentences should be in the affirmative rather than negative. This is not only a tradition of several centuries of common law cannot be changed in such a short time, but also because is no clear evidence that those instructions would eliminate the need for judges to interpret statutes the way they do now. This is because what is considered plain and clear by one person may be considered complex and ambiguous by another. This is the essence of the selective application by the American courts of the plain language rule, as there is no perfect test or gauge, so to speak, to judge any text as being plain, or complex, or as being clear, or ambiguous.

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